

Office of Right of Way

Property Management
Policy and
Procedure Manual

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INTRODUCTION

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Please Note

The goal of this manual is to provide current information in an ever changing world. Providing this manual through an electronic format allows updates and modifications to be added much faster than through paper manuals. If you are using a paper version of this manual, please consult the electronic version for the most current information. Should you wish to contact someone concerning the manual please, visit our web site at www.iowadot.gov/rightofway/propertymanage/pm_manual.html, or contact the Property Management Section, Office of Right of Way, Iowa Department of Transportation, 800 Lincoln Way, Ames, IA 50010, or (515) 239-1300.

We have tried to write this manual for you, the user. We hope you find the informal style user-friendly and a useful working tool.

MANUAL FORMAT

Your manual has been written in several chapters. Each chapter will provide specific information for a particular property management activity. The appendices contain samples of forms and other materials for your reference.

OUR GENERAL RESPONSIBILITIES

The Property Management Section is a part of the Office of Right of Way and operates under the general administration of the Chief Property Manager. In addition to property management services, the Section is responsible for record center, payment and audit, and local public agency activities. However, this manual is limited only to the property management activities. Manuals describing the other activities are also available.

The Property Management Section acts as a steward for the public's assets. We accept possession of real estate for the Department of Transportation (DOT) and clear the right of way of property interests and improvements before construction. When practical, we lease land and improvements as a source of revenue for the public and to lower management expenses. We provide general management of real estate before, during and after projects. After the project has been completed we dispose of land and improvements no longer needed.

CIVIL RIGHTS COMPLIANCE AND AFFIRMATIVE ACTION POLICY

Federal and State laws prohibit employment and/or public accommodation discrimination on the basis of age, color, creed, disability, gender identity, national origin, pregnancy, race, religion, sex, sexual orientation or veteran's status. If you believe you have been discriminated against, please contact the Iowa Civil Rights Commission at 800-457-4416, or the Iowa Department of Transportation's Affirmative Action Officer. If you need accommodations because of a disability to access the Iowa Department of Transportation's services, contact the agency's Affirmative Action Officer at 800-262-0003.

CONTRACT MANAGEMENT

We are committed to securing service agreements are with those persons agreeing to perform the service at the lowest price. We are committed to compliance with <http://www.fhwa.dot.gov/legsregs/legislat.html> Code of Federal Register 49 CFR 18. 36(12). Any protest, appeal or dispute concerning a selection or a question of fact in concerning an agreement or the performance of any contractual obligation shall be referred to the DOT's Right of Way Director, who shall hear and consider all of the evidence and notify the Consultant, in writing, of his/her decision. That decision shall be final and conclusive unless, within thirty (30) days from receipt of notification of such decision by the Right of Way Director, the Consultant shall appeal, in writing, to the Highway Division Director, who will review and consider both the evidence and the decision by said Right of Way Director, whereupon said Highway Division Director shall make a final, conclusive and binding determination and furnish the Consultant a written copy thereof.

CONFLICTS OF INTEREST

At the DOT we must be constantly aware of even the perception of conflict of interest. DOT employees have requested the opportunity to purchase items sold through the Property Management Section. As a result, DOT executive management has determined that sales of land, improvements and personal property may be made to an employee of the DOT only when the employee is the highest bidder at a public sale by sealed bid or auction. We will not sell or lease real or personal property to DOT employees through direct negotiations.

In addition, employees of the Office of Right of Way are specifically excepted and shall not be allowed to purchase or bid on land, improvements or personal property.

CHAPTER ONE

Basic Terminology

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INTENT

Every type of work uses special terms or jargon. While terms and jargon are useful, the usage often confuses people who have not been exposed to the particular meanings. We hope to limit these types of problems by providing a brief discussion of some of the basic terminology involved in property management. This section is not intended to include all terminology but to provide us with a starting point.

ADJACENT / ABUTTING OWNERS

One of the most confusing aspects of property management is the difference between an adjacent owner and an abutting owner. Usually when people use the terms adjoining or abutting they mean the same, but for disposing of land, Iowa law has narrow and specific definitions. The "adjacent owner" is provided a purchase preference in Iowa Code §306.23 <http://www.legis.state.ia.us/lowaLaw.html>, while the "abutting owner" does not receive the statutory preference.

➤ ***Adjacent Owner***

Iowa Code §306.23 <http://www.legis.state.ia.us/lowaLaw.html> prescribes how unused right of way shall be disposed. The term "adjacent owner" is defined in this Code section as the person(s) owning the remaining tract from which the property was originally acquired.

For example, the DOT acquires 20 acres from an 80-acre farm. Later, the DOT decides to sell 10 acres. The adjacent owner is the present owner of the remaining 60-acre tract, regardless of the physical location of the tract to be disposed and the remaining property.

➤ ***Abutting Owner***

The owners of land contiguous to the subject property.

TYPES OF OWNERSHIP

The DOT acquires property rights for public purposes. Sometimes all of the owner's property rights are required, while other times only a portion of the owner's rights need to be acquired. The DOT will acquire "fee title" or an "easement" depending on the needs of the proposed project. We have provided a brief discussion of the different types of ownership comparing similarities and differences.

➤ ***Fee Simple or Acquired in Fee***

"Fee" describes exclusive ownership of real property. All of the owner's property rights have been acquired. The State may sell the property upon disposal and convey the ownership rights. Title is acquired through a warranty deed or condemnation of a fee simple interest.

➤ ***Easements***

When the State requires something less than fee ownership, an easement may be acquired. An easement is a right to use property only for a specified purpose. Easements may be permanent or temporary acquisitions.

- ❖ Permanent Easement - Often the DOT acquires a permanent easement over property. Examples of permanent easements are for highway purposes or to construct and maintain a structure. Easements may be abandoned, terminated or transferred as part of highway right of way to another governmental agency.
- ❖ Temporary Easement - These easements acquire the right to use land for a specified purpose for a specified time. For example, the right to construct a sidewalk and the easement terminates upon completion of the construction.

EXCESS LAND INVENTORY

At one time we inventoried land by many different categories. Each category described land acquired for specific purposes or under specific circumstances. While that system was very detailed, it was also very confusing. We wanted a classification system that was easy for everyone to understand. We now classify land in two general categories; required or excess. The excess land inventory breaks down excess land into two groups; committed and non-committed land.

➤ ***Excess Land***

Excess land is simply land not required for the construction and maintenance of the existing highway. Often, excess land is acquired along with land required for the highway project. Often, excess land is acquired under the assumption that it would never be used as highway right of way and can be purchased with or without federal aid participation. The determination to acquire excess land may be made during the acquisition process for a number of reasons.

➤ ***Committed Land***

This land may be described as land being held until the present highway project is completed or for future highway improvements. For example, the land may not be

required for the current highway, but the land will be needed for an anticipated future expansion. Or, as in the case of a borrow, the land is required during construction activities, but after construction the land will no longer be needed.

➤ ***Uncommitted Land***

Land available for disposal.

➤ ***Inventory Value***

The prorated acquisition cost of the excess land. The cost of the entire parcel acquired is prorated on the basis of the acreage of land acquired as excess, including the cost of acquiring buildings or improvements located on excess land.

➤ ***Borrow Land***

Borrow describes land necessary to provide fill material for the actual highway area. Borrows purchased in fee simple and held for borrow material to be used on a project are committed land until after the completion of the project when they become non-committed land. Borrow land that is acquired by easement is not placed on the inventory. Borrow lands are identified on the excess land inventory under the remarks section.

EXCESS LAND DETERMINATION FORM

This form is also known as an "Excess Land Plat." Excess land should normally be identified through an Excess Land Determination form (Exhibit No. 1, Appendix "A"). This form originates in the Right of Way Design Section and a copy is sent to Property Management. The Right of Way Design Section records and plats the acquisition of excess land by quantity and location. After acquisition, Payment and Audit (within the Property Management Section) codes or audits coding for payment and for cost accounting. The excess land is then entered on the inventory, payment is provided, and we obtain possession of the parcel.

For a number of reasons an excess land determination form may not be available at the time of acquisition. When the final project plans are available the Property Manager will need to request a completed form from the Design Section.

OTHER CLASSIFICATIONS OF LAND

➤ ***Miscellaneous Lands***

These are properties that were not acquired as part of a highway project. For example, maintenance sites and material pits. When these types of properties are disposed, the sites are placed on the excess inventory and then removed after disposal.

CHAPTER TWO

Pre-Highway Construction

Property Management

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Prior to highway construction, the Property Management Section is responsible for managing all land, improvements, and personal property located on the land acquired for the project. When construction starts the Resident Construction Engineer becomes responsible for the management of required right of way, and Property Management remains responsible for all excess land. Property Management during the pre-highway construction process involves three separate areas.

1. *Planning*
2. *Receiving Possession of Property*
3. *Clearing the Right of Way*

PLANNING

The earlier Property Managers become involved in the project, the more effective their efforts can become. For example, field reviews are generally held early in the design process for most large projects. Office of Design, District, and Office of Right of Way staff physically inspect the project. The field review is an opportunity to discuss and review property management concerns.

Involvement with the Design, Appraisal, Acquisition, Relocation and Title and Closing Sections allows the Property Manager to foresee potential problems and address difficulties early in the process.

RECEIVING POSSESSION OF PROPERTY

Owners and tenants provide possession of property per the terms of the acquisition agreement, or in the case of condemnation, as prescribed by law. We accept possession of improvements and personal property as a result of a coordinated effort with owners, tenants, and all the Sections of the Office of Right of Way.

Receiving possession of property involves several steps. Each step is an important part of the process. The critical steps are as follows:

- *Determine What Property We Are To Receive*
- *Schedule When We Receive The Property*
- *Ensure We Receive The Property From The Right Person(s)*
- *Complete The Possession Process*

In order to obtain possession, the Property Manager must know what is being acquired, at what time, by whom, and how the transaction is to take place. All this information is provided by the various Sections of the Office of Right of Way. These four steps will provide us the basis necessary to secure possession of the land and improvements that have been acquired.

➤ ***Determine what Property we are to Receive***

The right of way acquisition contract describes what land, improvements and personal property are being acquired. Payment and Audit Coordinators (part of the Property Management Section) provide the Property Manager with a copy of the approved contract. More detailed descriptions of the acquisition can be found in the parcel appraisal(s). Often the Appraisal Section provides copies of the reports to Property Management, but the Property Manager may also find copies of the appraisal in the Right of Way Record Center (also part of the Property Management Section).

Identifying the acquired property is made easier through the visual aids provided by the Right of Way Design Section. Design provides us with construction plans, strip maps, aerial photos, plot plans and excess land plats.

➤ ***Schedule when we Receive the Property***

The Title and Closing Section provides closing sheets that tell us when the transaction has been or will be closed. The Relocation Assistance Section provides current information as to when the owners or tenants will be in a position to surrender possession of the property. Examples of possession time frames have been provided:

- ❖ Conveyance and Possession to Occur Simultaneously - Sometimes surrender of possession happens at the same time as the conveyance of title. In these cases the closing agent will notify the Property Manager if the transaction involves improvements, personal property, and/or excess land through a copy of the Title Audit. The Property Manager may be required to assist in the closing process in some cases.
- ❖ Possession to be Given After Closing - Often we receive possession of improvements after conveyance of title. The closing agent provides the Property Manager with a copy of the closing letter to the property owner and the completed Closing Statement. The Closing Statement denotes that while title has passed, possession has not. The Closing Statement also reminds us of the agreed upon possession date in the contract. The Property Manager will then assume responsibility for obtaining possession and delivering possession payments.
- ❖ Early Surrender of Possession - Sometimes our customers decide they want to surrender possession of their property earlier than agreed upon. The Right of Way acquisition contract contains a provision allowing early possession upon 10-day notice from the owners. When we receive these types of requests the Property Manager will arrange to accept early possession. But, the owner should be informed that we might not be able to provide the possession payment until the time of conveyance. The Property Manager should determine when the possession payment will be made and inform the owner.
- ❖ Extending Possession Dates - Extending possession dates is the responsibility of the Right of Way Relocation Assistance Section. The possession date is established by

the acquisition contract and is based on many considerations. The contract possession date may, or may not be based solely on project schedules. In any event, the occupant is entitled to a reasonable time to relocate. Any extension of this date is a change of a contractual agreement and will only be changed by the Relocation Assistance Supervisor.

Normally, an extension will not be granted for longer than three to four weeks past the possession date established by contract. Longer occupancy may require the occupant to enter into a lease.

- ❖ Possession of Property Acquired by Condemnation - Iowa Code §6B.25 and 6B.26 set forth possession rights following a condemnation. In most cases the right of possession passes to the DOT when the Compensation Commission award is deposited with the Sheriff (Iowa Code §6B.25) <http://www.legis.state.ia.us/IowaLaw.html>.

Iowa Code §6B.26 details the right of possession when a landowner's residence, dwelling, house, outbuildings (if the owner's residence or dwelling house is also acquired), orchard, or garden is acquired. Should the Compensation Commission award be appealed to District Court, the DOT cannot require the owner to surrender possession until after the damages have finally been determined and paid, **or** 180 days after the Compensation Commission award, **whichever comes first**. **Note: This section of Iowa law applies to other acquiring agencies differently.**

Once the DOT has the right to take possession following a condemnation, the law authorizes and enables the State to enter, manage, sever, remove, and otherwise dispose of all improvements and personal property necessary to clear the right of way and to proceed with construction. Owners and tenants may be evicted by the State after the State has obtained the right to take possession of the land condemned. However, such actions should be viewed as a last resort option. These types of evictions **require involvement by the General Counsel staff and concurrence by the Iowa DOT Director.**

- ❖ Possession of Mobile Homes - Securing possession of mobile homes requires the following steps:
 - The Title and Closing Section obtains a title and tax clearance statement.
 - The Property Manager delivers the possession warrant and receives the keys and title/tax clearance.
 - The Property Manager forwards the title and tax clearance documents to Vehicle Registration Special Service (VRSS) office in Des Moines (Telephone No. 515-237-3052).
 - The new title will be mailed to the Property Management Section.
 - Otherwise, the process is similar to securing possession of other improvements.
- ❖ Securing Possession through Eviction of Contract Seller and Tenants - The eviction process may become necessary in order to protect the public's interests. However, such cases should always be considered as a last resort situation. Should eviction

become necessary the Property Manager will work closely with the Chief Property Manager, Acquisition Section, Relocation Section, Director of Right of Way and the General Counsel staff. We have been directed that these types of evictions will also **require the approval of the Iowa DOT Director.**

NOTE: This discussion of eviction actions is limited to legal occupants as of the date of acquisition. Tenants secured by Property Managers as part of the asset management program shall be discussed later in this manual and are **not** a part of this discussion.

➤ ***Ensure we Receive the Property from the Right Person(s)***

This discussion is written primarily for parcels involving improved properties. Many people may have interests in a property, but usually only one or two people will actually give possession to the Property Manager. Determining which person(s) will actually give us possession of property is once again a team effort with the other sections of the Office of Right of Way. Relocation Assistance agents provide Property Managers excellent first hand knowledge of the people involved. The parcel file will contain applicable telephone numbers and addresses as well as contact notes that may contain valuable information. Title and Closing agents also provide important information for Property Managers.

When securing possession we need to know who we will meet with, what they will provide us, and why they are involved. We may receive possession of all the property acquired from one person or we may receive parts of what was acquired from several persons.

➤ ***Complete the Possession Process***

Securing possession of real and personal property can be done efficiently and with a minimum of problems if the Property Manager is adequately prepared. The process for obtaining possession actually occurs over a period of time. We may describe the time periods as pre-possession, possession and post-possession.

- ❖ Pre-Possession - The successful Property Manager plans and prepares before traveling to the field. A few of the tasks completed before traveling to secure possession have been provided.
 - Generally the DOT makes one payment when the owners convey title and another payment when the owners surrender possession. The Property Manager orders the possession check to be drawn and then delivers the possession payment.
 - The Property Manager schedules the appointment for the transfer of possession with the applicable parties.
 - To avoid confusion during the possession process the Property Manager should remind the owner(s) of their responsibilities prior to the meeting. For example, all debris and junk should be removed prior to transfer of possession.
 - The Property Manager ensures they have the necessary possession cards, possession warrants, key boxes and other items ready.

- Possession - This period is when the Property Manager actually meets with the person(s) and obtains possession of the property for the State. The following steps should be taken at this time:
 - Inspect the property to ensure compliance with the Acquisition Contract concerning physical condition, required items are present, and that all other items have been removed.
 - Measure all improvements for the demolition form.
 - Secure owner's signature on possession cards and receive keys.
 - Deliver possession warrant.
 - Install key box with keys included.

- ❖ Post-Possession - After possession has been transferred, the Property Manager completes the balance of the Possession Process.
 - Deliver applicable possession card to the County Treasurer.
 - Determine whether improvements shall be sold, leased or demolished.
 - Transfer or disconnect utilities based upon the preceding decision.
 - Update Property Management parcel files, inventories, and ledgers.

CLEARING THE RIGHT OF WAY

Highway projects cannot be built until all improvements and personal property, whether owned by the State or by private parties, are removed from the right of way. As Property Managers, we must ensure all property is disposed of prior to construction activities. Clearing the right of way should be scheduled and accomplished on or before the R-5 (Relocation) function date provided in the DOT production schedule.

➤ ***Excess Land Exception***

Improvements and personal property located on land acquired as required right of way need to be removed in a timely manner, but improvements and personal property located entirely on excess land not needed for highway purposes are a different situation. The Property Manager must exercise good judgement as to whether to demolish, sell or retain the improvements to be sold later with the land. The Property Manager should develop a management plan and document the reasons for selecting the course of action taken. The Chief Property Manager and Property Management Production Coordinator should be kept informed as to what processes are being implemented. Complex cases, situations involving significant money and/or possibly controversial parcels may require involvement of the Chief Property Manager, the Property Management Production Coordinator, and others during the decision making process.

➤ ***Uses for Improvements / Personal Property***

Often we find markets for all types of improvements and personal property. We generally market such items by sealed bid, auction, or negotiated sale. Sale procedures are discussed extensively later in this manual. We should also consider if other offices within

the DOT could utilize the improvements. For example, different maintenance groups have used trees and plantings on other DOT lands. Maintenance staff have moved and used metal buildings for their official activities. Environmental offices have used excess land for petroleum farming. The list of uses is extensive and only limited by the imagination of Property Managers.

➤ **Demolition Process**

If the improvements cannot be economically sold and no other group within the DOT is interested, demolition is probably required. Each Property Manager maintains an improvement inventory and conveyance ledger that records the status and disposition of the property on projects the Property Manager is responsible to manage. The Property Manager shall keep the Chief Property Manager and Property Management Production Coordinator informed of any problems associated with disposition or demolition of improvements which may prevent certifying the project as clear for construction contract letting purposes.

Whenever improvements or personal property become the property of the DOT the Property Manager shall review and inspect each parcel. The purpose of this review and inspection is to determine the appropriate course of action. If the demolition option is selected, all inspections shall be written, dated and signed by the inspecting Property Manager on the request for demolition form (please refer to Appendix "A", Exhibit 2). This form was created to comply with several state and federal regulations and accomplishes several tasks. A brief discussion has been provided.

- ❖ Pest or Rodent Control - We are responsible for controlling or exterminating pests or rodents on acquired property. Local health officers may be consulted and invited to attend property inspections in determining what pest or rodent control or extermination measures should be taken. Although this problem may be most noticeable on complex urban projects, we have an obligation to remain good neighbors on all projects.
- ❖ Measurements of Improvements - When the owner(s) grant possession of the property the Property Manager measures all improvements including their foundation, driveways, sidewalks and miscellaneous concrete slabs. These measurements will be reported on the "*Request for Demolition*" memo to the Office of Contracts along with the foundation type, location of wells and septic systems, pest or rodent control to be done, and a recommendation to rent, sell or demolish the improvements. This form is used by the Office of Contracts to let bidding contracts for demolition work and must include a plat or drawing of the property. Copies are sent to Office of Location and Environment, Right of Way Design, the applicable District Engineer and Resident Construction Engineer, and the Parcel File. Additional copies may be sent at the Property Manager's request.
- ❖ Protection for Property - On occasion special protection of property may be warranted and practical. When necessary, local law enforcement agencies may be notified of the fact that State owned property is vacant and/or security personnel may be hired to protect the property. We may consider providing security when the property is

valuable, not readily accessible to surveillance by local law enforcement authorities, or if the property cannot be reasonably closed or secured against entry by the general public.

- ❖ Asbestos Inspection - The Office of Location and Environment inspects all improvements to be demolished for the presence of asbestos. If asbestos is present, Environmental Services will arrange for removal by a qualified contractor prior to the demolition. The Property Manager notifies the Office of Location and Environment through the "*Demolition Request Form.*"
- ❖ Asbestos and Improvements to be Moved - Houses or other buildings are frequently moved by the original owner or subsequent buyers. These cases are not a removal of asbestos within the meaning of Chapter 88B of the Code of Iowa <http://www.legis.state.ia.us/lowaLaw.html>, or the rules pursuant to that chapter. Although there is not a need to remove asbestos from the improvement to be moved, asbestos located in the remaining foundation or exposed as a result of separating the improvement from the foundation must be abated in conformance with applicable laws, codes and rules. In these cases, the Property Manager informs the Office of Environmental Services and they will identify and abate any concerns created by separating the improvement from the foundation.
- ❖ Hazardous Wastes and Storage Tanks - Underground and Above Ground - An initial hazardous waste inspection should have been completed in the planning process. The Office of Location and Environment is responsible for tank closures and removals. Property Managers should look for any signs of underground tanks or soil contamination from any cause and work with the Office of Environmental Services to ensure appropriate actions are taken concerning storage tanks.
- ❖ Archaeological, Historical or Gravesites - An initial inspection should have been completed in the planning process. However, Property Managers should assure themselves archeological, historical and gravesite issues have been addressed. Properties with these types of significance as noted by Environmental Services should not be cleared or demolished until all studies are completed. Any indication of archaeological or gravesite findings, should be reported to Environmental Services who will make arrangements for site investigation.
- ❖ Parcel Inventory Records - Each Property Manager shall keep a record of parcels acquired that include a description of the improvements, how the improvements were disposed and the date of each disposal action. The records shall be maintained on a project basis and should reflect what disposition has been made of improvements and miscellaneous items. For example, parcel inventory records would include routine disposal work products such as an auctioneer's agreement, bid acceptance recommendation, demolition agreements, bill of sale, transfer memo, etc.

➤ **Land Clearance Schedule**

When clearance lead time permits, the Property Manager shall develop and maintain a land clearance schedule in order to assure timely project clearance.

- ❖ Intra-Departmental Transfers - All offices who have received intra-departmental land use transfers, shall be notified of the land clearance schedule and requested to terminate their land use within the land clearance schedule.
- ❖ Thirty-Day Cancelable Leases - All leases requiring a 30-day notice of cancellation shall be given notice of cancellation at least 90 days prior to the letting date of the project. These cancellations may require coordination with the Relocation Assistance Section if the lessee is also a project displacee.
- ❖ Year-to-Year Leases - The lessees shall be notified of the DOT intention not to renew the leases for the year in which construction is scheduled.
- ❖ Vacation of Residents - Land acquired for local public roads and expressways but programmed for deferred stage construction shall be cleared of buildings and improvements as owners/tenants vacate.
- ❖ Emergency Clearance Prior to Staff Action Approval - From time to time it is necessary to obtain immediate or interim DOT approval of an auctioneer's agreement, immediate approval and acceptance of a sealed bid, a negotiated sale, or a demolition or removal agreement. This is usually in cases of inadequate land clearance lead time. Immediate approval may be necessary to avoid unreasonable disruption of construction contract letting schedules or to avoid unreasonable interference with construction, or to meet other project related contract or public commitments. In all such cases, Property Management shall record the circumstances and recommend a method of clearance. The Right of Way Director shall approve the recommendation and Property Management shall prepare an appropriate Staff Action Order, if necessary, for approval.
- ❖ Certify Clearance of Land - After clearance of each parcel of land on a project, the Property Manager shall make final entry in the Improvements Inventory and Conveyance Ledger. The Resident Construction Engineer is notified of the results of the sales. If an item is not disposed of by sale, we are authorized to negotiate the disposition of the item.

Should lead time or circumstances prevent or delay clearance of any parcel of land, the parcel not cleared shall be listed on the Right of Way Certificate as an exception.

CHAPTER THREE

Managing the Right of Way

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This section of the manual has been devoted to the decision making process involved in managing right of way. This section probably offers the most challenges and opportunities. Each situation is unique and often there will be no "right " answer as to how a particular situation should be managed. The Property Manager must use sound judgement, experience and knowledge in deciding what action to take.

Making good management decisions is the most challenging aspect of Property Management. The goal of this section of the manual is to provide basic information that will assist in making right of way management decisions. We will discuss four general areas.

1. *Basic Parameters or Ground Rules*
2. *Sources of Property Management Assignments*
3. *Approaches to Management*
4. *Available Support and Resources*

BASIC PARAMETERS OR GROUND RULES

Assignments become manageable when we understand the basic parameters that we need to work within. When managing right of way, we need to accomplish our activities without compromising or conflicting with our basic parameters. A brief list and discussion of the principles that make up our parameters have been provided. These principles have been listed in order of importance with the most important principle first.

➤ ***Compliance with Laws, Regulations and Policies***

State and federal laws, regulations and established policies govern our work. The Property Manager must base all right of way management decisions on these guidelines. When other interests conflict with laws and regulations, legal compliance must take precedence.

➤ ***Maintain Integrity of Project***

We must remember that the purpose for acquiring land and improvements is to accomplish a larger public improvement project. The managing of right of way cannot interfere with the efficient progress of the overall public improvement.

➤ ***Protection of the Public's Assets***

The general public provides the funds to acquire property. The property has become an asset of the public. As stewards of the public's assets, we have a responsibility to ensure the wise management and use of these assets.

➤ ***Service for the Individual Customer***

All of our customers are important and their requests deserve serious consideration. We should search for ways to accommodate the individual request that conform with the preceding principles.

➤ ***Necessary Department Approvals***

The information provided here may be repeated in other sections of the manual. The intent was to provide one area to serve as a brief guide for required approvals.

❖ Staff Action - DOT Policy and Procedure No. 300.02 requires certain transactions to be submitted for Staff Approval through a Staff Action. Property Management transactions may include Land Sales, Leases, Bills of Sale (personal property and buildings), Contracts for Valuation Opinions, Contracts for Appraisal Review, Contracts for Special Demolition and Maintenance Repair, and Contracts for Auctioneer's Agreements. Specific examples have been provided:

- All land disposal sale transactions, abandonments, flowage easements, and permanent interdepartmental land transfers in excess of \$10,000
- Authorization to dispose of Facilities properties
- Disposal of excess right of way or Facilities properties over \$10,000
- Sales of miscellaneous improvements exceeding \$10,000. The Chief Property Manager is authorized to approve all sales of improvements under \$10,000.
- Contracts for demolition, maintenance, auctioneer services and repair work over \$10,000. The Chief Property Manager is authorized to enter into these agreements for amounts up to \$10,000. Whenever practical, cost quotes shall be obtained from at least two firms or individuals for purchases of more than \$1,000. We may waive these quotes to obtain the services of a person experienced in selling specialized or unique items of property and in emergency situations when materials, supplies or services are urgently needed to avoid damage, deterioration of the property or to eliminate dangerous or hazardous conditions.
- Contracts for appraisal, review appraisal, realtor services, over \$10,000. The Chief Property Manager is authorized to enter into these agreements for amounts up to \$10,000.

➤ ***Basic Management***

We should consider demolition, removal, maintenance or repairs when these activities will reduce hazards to the public, enhance the property's market value or support a higher rental rate. Property Managers are responsible for general maintenance and upkeep as long as the property is under the control of the Property Management Section. Often debris, junk and other miscellaneous items accumulate on our right of way. These items may not warrant requesting a demolition contract. In some cases, improvements and

personal property may be cleared, maintained, or managed through a negotiated agreement for services.

Unless a request for demolition has been submitted to the Office of Contracts, the Property Manager will coordinate the removal of all junk, refuse and litter from the property through private contractors. Vacant buildings shall be closed, and when practical, locked or boarded up. Basements shall be fenced.

SOURCES OF PROPERTY MANAGEMENT ASSIGNMENTS

The Property Manager receives work requests from three basic sources. As these sources are different, the criteria used by the Property Manager for arriving at decisions may also be different.

➤ ***Project-Based Property Management***

Property Management starts during the planning process, progresses through the Acquisition Phase, continues throughout Construction, and finishes with the disposal of excess lands after completion of construction.

Generally 5 to 7 years, or more, of property management activities are required for complex projects, while many other projects will only require short term property management attention. Property Management decisions will be influenced by the type of project, the current status of the project, and when the project is scheduled to be completed.

➤ ***Continuous Property Management***

Often Property Management assumes the right of way management role on operating highway facilities. These situations may require solutions that continue far into the future and the decisions may be for extended or indefinite periods of time. A common example is Right of Way leases that automatically extend themselves year after year. Maintenance staff are generally involved and active in these types of situations.

➤ ***Individual Cases***

We regularly receive individual customer requests. Often these requests involve the sale or leasing of land that has been owned by the State for 30, 40 or even 50 years. These types of requests require anticipating future needs, developing historical research, and active involvement of Maintenance staff.

APPROACHES TO MANAGEMENT

There are a variety of different ways to manage right of way. We will discuss a few of the available methods in this area of your manual.

➤ ***Demolish and Clear***

Often demolishing improvements and clearing land makes the most sense; for example, when construction is to occur soon after we receive possession. Another example is when the improvements are not decent, safe and sanitary. When the demolish and clear approach is used the Property Manager may still be responsible for the next approach, maintain.

➤ ***Maintain***

Property Management remains responsible for managing the right of way until the construction or maintenance staffs assume responsibility. When a contract for construction has been let, the construction engineer assumes responsibility and after completion of the project the Maintenance staff assumes responsibility for required right of way.

During the time the land is the responsibility of the Property Manager, general maintenance work must be arranged through Property Management. The Property Manager hires the necessary contractors or individuals.

➤ ***Sale***

Selling unwanted assets is another approach. Improvements are routinely sold to be moved from required right of way. This procedure is covered extensively later in this manual. Usually land cannot be sold until completion of the project.

➤ ***Lease***

Leasing can be an effective way of managing property. Typically maintenance becomes the responsibility of the tenant relieving the Property Manager of these responsibilities. Leasing is also covered extensively in this manual.

➤ ***Transfer of Jurisdiction***

On occasion property may be transferred to the jurisdiction of other governmental entities. Details as to when this approach may apply can be found later in this manual.

➤ ***Other Internal Uses***

Often other groups within the DOT can utilize the assets acquired as right of way. For example, excess land has been used for removing contamination from other lands, buildings have been moved for Maintenance uses, and trees have been replanted on other DOT properties. The successful Property Manager should always be searching for ways to use the assets we acquire for other DOT purposes.

AVAILABLE SUPPORT

The Property Manager is not alone when deciding how the right of way should be managed. Several areas for support are available. We have provided a few examples but there are certainly other resources available.

➤ ***Within the Property Management Section***

The Property Manager can find support, assistance, knowledge, experience and expertise within the Property Management Section. Co-workers, the Property Management Production Coordinator, and the Chief Property Manager are available to serve as resources.

➤ ***Within the Office Of Right Of Way***

Necessary information and data are available through the other Sections in the Office of Right of Way. The successful Property Manager must develop a strong working relationship with other right of way staff and utilize the Office as a resource.

➤ ***Within the DOT***

Scheduling, recommendations, approvals and ideas are just a few of the services provided by the other groups within the DOT.

➤ ***Outside Support***

The successful Property Manager constantly consults and confers with members of other governmental entities and members of the public.

CHAPTER FOUR

Leases

Revised 5/2007

We usually administer several hundred leases annually. Leasing is a valuable property management tool and this manual has dedicated a large section to cover the leasing process. The lease discussion has been divided into six basic aspects, plus we provide an overview of the process:

1. *The Basics*
2. *Types of Leases*
3. *Essential Lease Terms*
4. *Administration of Leases*
5. *Cancellation/Termination of Leases*
6. *Lease Renewals*
7. *Overview of Process*

THE BASICS

We should always consider renting both improvements and personal property to obtain the optimum return on the investment and to protect the property from vandalism. We will only rent houses that are decent, safe, and sanitary.

➤ ***What is an Airspace Lease?***

An airspace lease is defined in Title 23 of the Code of Federal Register 710.105 <http://www.fhwa.dot.gov/legsregs/legislat.html> as that space located above, at, or below the highway's established grade line and lying within the approved right of way limits of a highway. Considering this definition, the word "airspace" may be confusing. An airspace lease applies to all land, above, at, or below the highway. This applies to all land acquired for highway purposes, and not limited to air rights leases.

➤ ***Setting Rental Rates***

Our policy prescribes that rental agreements shall not be offered other than on a year-to-year (with 30-day cancellation clauses) or month to month basis, at the fair market rental rate as determined by the Property Management Section. Rental rates are set by Property Managers considering the length of time the property may be available, the state of repair, potential uses for the property, prevailing market rental rates for similar property in the area and the ultimate disposition of the property. The fair rental rate may be for mutual benefit when the State receives benefits such as reduced maintenance costs, protection of the property from vandalism or other identifiable benefits. In these cases, the lease file will contain documentation as to the estimated market rent and the estimated savings as a result of the lease.

➤ ***Land that may be Leased***

Land held in fee, as well as land acquired by permanent easement being held for an anticipated highway improvement, may be leased on a cash basis. Land held by easement for which there is no anticipated highway improvement may be leased on a mutual benefit basis. Serious consideration should be given to abandoning the easement rather than leasing the property. Renting land held by easement can become a sensitive issue; care should be taken.

Iowa Code §6B.60 <http://www.legis.state.ia.us/lowaLaw.html> prohibits rent to be charged until after the owner receives just compensation for their land.

➤ ***Internal Recommendations***

When we are not sure if leasing would be counterproductive to other offices within the DOT, we secure internal recommendations. Periodically, we may also use this process when renewing leases.

➤ ***Selecting Tenants***

We select tenants pursuant to requirements established in Title 49 Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulation may be amended. These requirements shall be strictly adhered to. Discrimination represents unacceptable behavior and will not be tolerated.

- ❖ Agricultural property - In the case of agricultural leases, the former owners or former tenants should be provided the first opportunity to lease the land. If former owners or tenants are not interested, abutting owners and other interested parties in the area should be provided an opportunity to lease the property. Generally, advertising is not necessary in these cases.
- ❖ Non-Agricultural property - The Property Manager should keep lists of interested parties. The property may be advertised through the use of signs and/or newspaper or other media advertising. The Property Manager may also hire a local realtor to find tenants.
- ❖ If a tenant cannot be found - We should review the situation to determine the feasibility of leasing the property.

➤ ***Managing the Rentals***

Even though properties are leased, we still need to ensure that properties are maintained in a safe manner rather than a public nuisance. Property Managers continue to manage and oversee all maintenance, advertising, and similar expenses incurred by or on behalf of the

DOT on each rental item. The amount, date, and purpose for which the expense was incurred shall be approved by the Property Manager and documented in the file. Claims are then processed, and payment made, through Universal Payment Voucher.

TYPES OF LEASES

➤ *Residential Leases*

A Residential Lease includes the lease of a home, an apartment, or any other building or space in any structure or improvement used as a dwelling place (see Appendix "B", Exhibit 1). Only properties that are decent, safe and sanitary may be leased. Decent, safe and sanitary requirements are extensively discussed in the Relocation Assistance Manual. Residential tenants are found through advertising efforts, inquiries from perspective tenants or through the services of a local realtor.

- ❖ Short-Term Occupier - Historically we have considered residential tenants as either "short-term occupiers" or "long-term occupiers. " A "short-term occupier" leases the property with the full knowledge that they must vacate the property within 6 months from the time it is rented. The market rent charged to the short-term occupier is usually less than if the property could be leased for a longer period of time. The Property Manager determines the amount of rent to be charged. The Property Manager should also determine if having someone occupy the property, even for just a short time before the construction letting, is good management practice or not.
- ❖ Long-Term Occupier - A "long-term occupier" applies when the residence may be occupied for at least longer than six months and possibly for several years. The rental rates in these cases must be based on current market rates. These cases are found when the property was acquired far in advance of the actual construction date or on projects that were postponed or canceled for one reason or another.

NOTE: Even though we anticipate the availability of the property over a longer term, the Property Manager must reserve the right to cancel the lease in 30 days in the event the DOT determines the property must be vacated.

- ❖ Determining Rental Rates - Rental rates are based on the rental rates for similar properties in the area.
- ❖ Damage Deposits - Property damage deposits are required for residential tenants. The damage deposit should be equal to one month's rent and is due before the tenant is allowed possession of the property. Damage deposits and rent payments shall be made by certified check, money order or cashier's check made payable to the DOT. Cash shall **not** be accepted.
- ❖ Length of Lease - Residential Leases shall normally be for one year and shall terminate on the anniversary date of the lease. Residential Leases with terms of less than one year shall contain a termination date agreed to by both parties. Either party can cancel the lease by providing a 30-day Written Notice.

- ❖ Lead-Based Paint - Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of known lead-based paint and/or lead based paint hazards in the dwelling. Lessees must also receive a federally-approved pamphlet on lead poisoning prevention.
- ❖ Disclosure of Lead-Based Paint Form - Lessees shall sign a "Disclosure of Lead-based Paint and/or Lead-based Paint Hazards" form provided by Property Management and approved by the EPA. This form shall be kept in the lease file (see Appendix "B", Exhibit 6).

➤ **Commercial Leases**

A few examples of Commercial Leases are offices, apartment buildings, other buildings to be used solely for business purposes and parking lots (see Appendix "B", Exhibit 2). These types of properties are not to be used as residences. Commercial leases may or may not involve improvements. The purpose for which the property is intended to be used determines whether or not a commercial lease should be used. Commercial tenants are found through advertising efforts, inquiries from prospective tenants or through the services of a local realtor.

- ❖ Short-Term Occupier - Historically we have considered commercial tenants as either "short-term occupiers" or "long-term occupiers." A "short-term occupier" leases the property with the full knowledge that they must vacate the property within 6 months from the time it is rented. The market rent charged to the short-term occupier is usually less than if the property could be leased for a longer period of time. The Property Manager determines the amount of rent to be charged. The Property Manager should also determine if having someone occupy the property, even for just a short time before the construction letting, is a good management practice or not.
- ❖ Long-Term Occupier - A "long-term occupier" applies when the residence may be occupied for at least longer than six months and possibly for several years. The rental rates in these cases must be based on current market rates. These cases are found when the property was acquired far in advance of the actual construction date or on projects that were postponed or canceled for one reason or another.

NOTE: Even though we anticipate the availability of the property over a longer term, the Property Manager must reserve the right to cancel the lease in 30 days in the event the DOT determines the property must be vacated.

- ❖ Length of Lease - Commercial Leases shall normally be for one year and shall terminate on the anniversary date of the lease. Leases with terms of less than one year shall contain a termination date agreed to by both parties. Either party can cancel the lease by providing a 30-day Written Notice.
- ❖ Rental Rates - Rental rates are based on the rental rates on similar properties in the area.

- ❖ Damage Deposits - Property damage deposits are required for commercial leases on properties with buildings. The amount of the damage deposit is determined by the Property Manager. Damage deposits and rent payments shall be made by certified check, money order or cashier's check made payable to the DOT. Cash shall **not** be accepted.

➤ ***Agricultural / Farm Leases***

A Farm Lease includes any land rented for any agricultural use (see Appendix "B", Exhibit 3). In general, a Farm Lease is only used when we think the land will not be needed for construction for at least one year and the land is of a size and shape that would make it economically feasible to farm.

Former owners or former tenants should be provided the first opportunity to rent the land they used to farm. If necessary, other tenants may be found through inquiries by prospective tenants or abutting owners/tenants.

Farm Leases shall normally have a commencement date of March 1 and shall terminate at the end of February of the following year. In situations where the leased area is required for construction purposes, a termination date when the crop has been harvested (late October - December 1) may be used. Farm Leases may be terminated earlier than the end of February if the lessee violates the terms of the lease.

The DOT and Property Management Section promote conservation tillage and appropriate soil conservation practices when renting farmland. As a general principle, fall plowing of excess land is discouraged.

In areas where the Property Manager has notice from Maintenance staff of a wind erosion traffic safety related problem, fall tillage of both required right of way and excess land may be prohibited by the lease. Strict enforcement shall be requested when blowing soil and snow are known to be a hazard to the traveling public. When a tenant has violated a no fall plowing agreement in a wind erosion traffic hazard area, Property Management shall notify the tenant of the violation in writing. The notice shall state that the tenant may be found to have liability for negligently contributing to the cause of any accidents arising out of blowing or drifting soil.

Farm Leases shall prohibit row crops on land when it is evident soil erosion has been or would be excessive due to the slope or poor soil conditions. Generally these will be areas where the slope is over three percent and contour or strip farming is not being done. Farm Leases, which prohibit row crops, shall limit use to pasture or hay and shall contain appropriate provisions for noncompliance. These provisions may require the tenant to rehabilitate the area by repairing, fertilizing and reseeding.

Property Managers may contact the tenant to determine if they would consider using conservation tillage practices on parcels of excess land of 20 acres or more. Property Managers may encourage conservation tillage but may negotiate and accept leases without such practices when the excess land will be disposed of within the next three crop

years. When a parcel exceeds 20 acres and will be held for three or more crop years the parcel may be offered for rent with specified conservation tillage practices for a three-year term. The Property Manager shall determine the most appropriate and profitable conservation tillage practices being used in the area with the assistance of the local NRCS office.

➤ ***Right Of Way Leases – Mutual Benefit – Harvesting Grass***

A Right of Way Lease is a mutual benefit lease for land held by the DOT in fee or easement and when, in the judgement of the Property Management Section the land has no cash rental value or the benefits received off-set the market rental value (see Appendix "B", Exhibit 4). For land held by easement the underlying title holder or abutting owner shall have preference.

Mutual Benefit Leases are normally for less than one acre, but may also include larger areas when the quality of the land is minimal (rough terrain), or the physical configuration and features of the area lends little or no value.

Prospective Right of Way Lease tenants are usually interested parties who have contacted the DOT. Right of Way Leases shall be cancelable on a thirty-day notice. In all cases this notice shall be given as a Notice of Termination of Right of Way Lease (see Appendix "B", Exhibit 7). If the Right of Way Lease was recorded, we shall record the Termination in the county where the lease was originally recorded.

Maintenance staff is responsible for issuing permits to authorize haying or harvesting grass within highway right of way required for the construction and maintenance of the existing highway. Property Management is responsible for right of way being held in advance of a construction project. The policy for the administration of private use of right of way is contained in the Administrative Code. Questions concerning harvesting grass should be referred to the Area Maintenance Manager who will issue the permit.

➤ ***Contractor's Lease Agreement***

A Contractor's Lease Agreement may be negotiated at the request of the contractor (see Appendix "B", Exhibit 5). These leases are based on the recommendations of the District Office or Resident Construction Engineer and approved by the Chief Property Manager.

Contractors request the right to lease excess land (not required regular right of way) for a variety of purposes. These requests may include equipment repair and storage, plant sites and haul roads. The contractor's use of excess land is permitted and controlled by the Lease Agreement. The Property Manager determines the rental rate, unless the construction plans specifically provide that the State will provide the land to the contractor for their use. A performance deposit/bond in the form of a cashier's check, money order or certified check is required. Any damage to the value of the land or improvements as a result of the contractor's use may be collected and paid through the contractor's performance deposit/bond. Borrow areas shall not be leased to contractors when the State only acquired a temporary easement or if the proposed site is within the excavation limits of a borrow acquired in fee.

➤ ***Excess Land Lease Agreement (Special)***

These agreements address fencing problems, special access problems and public utilities. These agreements may have a variety of terms ranging from a few days to an indefinite date. A nominal fee or minimum rent may be assessed. Agreements should not be entered into that involve right of way required for the construction and maintenance of the existing highway. All right of way use permits or licenses to use required right of way shall be issued by the Maintenance staff. Excess Land Lease Agreements (Special) should be coordinated with Maintenance Services when they affect the DOT use of required right of way.

➤ ***Intergovernmental Leases***

Intergovernmental Leases are normally short-term use agreements allowing another governmental authority the temporary use of excess land. Long-term situations are generally accomplished through disposals as opposed to leases. Excess land and required right of way can be leased to other governmental entities for public parking when the parking does not interfere with the highway systems; for example, a parking lot under a bridge. If the area to be leased is used expressly for governmental purposes the lease may be for mutual benefit. However, if the land is to be used for proprietary purposes, fair market rent must be charged.

➤ ***Additional Lease Forms***

As we have seen, the types of lease agreements are numerous. Each situation may be different or require a different type of form. An additional lease form, a "Lease Agreement " has been provided (see Appendix "B", Exhibit 8).

➤ ***Leasing Wells***

The Attorney General's Office has advised us not to lease wells or water systems on excess or required right of way in light of recent groundwater legislation.

➤ ***Rental Agreement - To Prevent Subsequent Tenants***

Often tenants move as soon as they receive their tenant compensation package even though the DOT and the owner are still negotiating for the sale of the property. The owner is then free to rent the property to a subsequent tenant and the subsequent tenant then becomes eligible for relocation assistance. If the subsequent tenant receives benefits and moves while negotiations with the owner are continuing, additional subsequent tenants may result. Obviously avoiding these types of situations is in the best interest of the general public. In order to prevent these situations, the acquisition or the relocation agent may enter into an agreement with the owner to leave the property vacant until the acquisition process is completed (see Appendix "B", Exhibit 9).

The payments to the owner for leaving the property vacant are handled through the Property Management Section, but these agreements do not put the DOT in the position

of being a tenant and therefore the State does not assume any maintenance or utility responsibilities.

Usually, the Relocation Agent will bring these situations to the attention of the Relocation Assistance Supervisor. If a decision is made to acquire the right to rent property, an acquisition agent or a relocation agent will present the agreement to the owner, and the signed agreement will be returned to Property Management to make the necessary payments at the agreed fee.

The Acquisition Section Supervisor will inform Property Management when the property has been acquired or when the agreement is terminated. The costs incurred in the acquisition of the owner's right are acquisition, not relocation costs. Please refer to the Relocation Manual for complete instruction on this procedure.

ESSENTIAL LEASE TERMS

The lease forms used by Property Management are documents that have been created through a long history of different experiences and assembling knowledge. The forms are living documents that can and should be modified as time goes on, but changes should only be made after careful consideration with input of Property Managers, management and legal advice. With this in mind a brief discussion of essential lease terms has been provided.

The lease forms previously mentioned and provided in Appendix "B" contain several "boiler plate" clauses generally used in each type of lease. It is not the intent of this manual to describe each such "boiler plate" clause in detail. The intent of this section of the manual is to provide a discussion of a few essential terms that should be present. This list does not include all necessary terms and you should refer to the accepted lease forms for further reference.

➤ ***Term of the Lease***

The period of time the lease shall run is an essential term that must be included in all leases. Leases are not generally written for longer than one-year periods and are cancelable with 30 days notice.

All leases written for periods longer than one year and cancellation clauses longer than 30 days shall be developed with the full input of the Property Management Lease Coordinator or the Chief Property Manager with the express approval of the Chief Property Manager. The lease file shall contain documentation as to the reasons for granting the extraordinary time periods and if necessary concurrences from other impacted offices.

➤ ***Uses to be Allowed***

The use(s) allowed must be specifically addressed in the lease.

➤ ***Rental Rate***

The amount of rent to be paid must be written in the lease.

➤ ***Cancellation Clause***

The DOT acquires land for highway purposes. We need to remember that although land can and should be leased, the primary purpose for owning land is to satisfy the needs of the highway system. To ensure that all property can be used for highway purposes if necessary, all leases must have a cancellation clause as part of the document. Generally, cancellation clauses will allow the DOT to cancel the lease without cause with a 30-day notice.

➤ ***Insurance Requirements***

We have several requirements concerning insurance in our lease agreements:

- ❖ Liability Insurance - Commercial tenants will be required to maintain public liability insurance for the tenant's uses of the property. The DOT shall be named as an insured party and proof that the insurance is in force shall be maintained in the file. Failure to obtain or to maintain public liability insurance shall be cause to forfeit, cancel and terminate Commercial Leases. The average minimum standard for coverage is \$1,000,000 per occurrence and \$1,000,000 aggregate total. The coverage should not be for coverage limits less than the business has maintained prior to becoming our tenant.
- ❖ Fire Insurance - When the original owner remains in possession of the property they shall be required to maintain fire insurance until they surrender possession and vacate the premises. All insurance proceeds shall be made payable to the DOT. Once the original owner surrenders possession of improvements and vacates the premises, the State shall be self-insured for fire loss purposes. The acquisition contract shall describe the owner's obligations. All Property Management leases with original owners shall require fire insurance. The original owner shall be requested to maintain their existing fire insurance policy.

➤ ***Civil Rights Addendum***

Each lease shall contain the Civil Rights attachment identified as Appendix "A", Attachment to Lease. This clause is provided as part of the sample leases found in the Appendix "B" of this manual.

ADMINISTRATION OF LEASES

This portion of the lease discussion is dedicated to the "nuts and bolts" of lease administration.

➤ ***Approvals***

Generally leases are signed by the Property Manager responsible for developing the lease and then approved by the Chief Property Manager. Office of Facilities properties leased in excess of \$25,000 per year shall also require Staff Action.

Some airspace leases require FHWA approval prior to leasing:

- ❖ All proposed leases of airspace under a structure or over a highway facility when the highway is on the Interstate System (Example: parking lots under bridges and/or buildings being constructed in the right of way or over the highway).
- ❖ All proposed leases of Interstate airspace (right of way) regardless of size.
- ❖ In the past, FHWA required a "credit" whenever property purchased with any federal money was sold. FHWA now requires a credit or that the money be used in other highway projects eligible for Title 23 funding. The DOT has adopted the policy that all proceeds realized from the leasing of assets must be deposited into the Primary Road Fund and used on Title 23 eligible projects.

➤ ***Recording Leases***

Generally, the only leases recorded are those leases for terms of more than one year: for example, Right of Way Leases; or leases with cities and counties, regardless of the term. All recorded leases are to be recorded in the county where the land is located.

➤ ***Rental Deposits***

We require an amount of at least one month's rent from residential tenants as a rental damage deposit. If appropriate, we may require a higher rental deposit not to exceed two months' rent as authorized by Iowa Code §562A.12 <http://www.legis.state.ia.us/lowaLaw.html>. Deposits are held in a non-interest bearing account maintained by the Office of Finance. Within 30 days from termination of the lease, Property Management shall, by universal payment voucher, request the Office of Finance to return the rental deposit. Amounts may be withheld to pay unpaid rent, to restore the property to its condition when the property was leased (ordinary wear and tear excepted) and to recover expenses incurred in acquiring possession from the tenant.

If any of the deposit is withheld, the tenant must be sent a written statement showing the specific reason for withholding all or part of the rental deposit. This statement must be sent within 30 days from the lease termination date, or the right to retain rental deposit is forfeited.

In renewing a year-to-year lease, we shall notify the tenant that the rental deposit will be retained. The rental deposit is also retained on a month-to-month lease.

➤ ***Payments and Receipts for Rent***

All rent is due upon execution or renewal of a farm lease. All rental payments, except Farm Leases, will be paid by money order, cashier's check or certified check, or personal check. Monthly rental payments shall be due on the first of the month. If the lease is terminated in advance (in the middle of a month) only the prorated amount shall be due. Tenants shall be instructed to send all rental payments to the Office of Finance.

In limited situations the Property Manager may consider accepting rent in two installments. Installments should only be considered in cases where significant acres and a minimum rental payment of \$15,000 is involved. In these cases the Farm Lease installment payments shall be made 50% in advance of the March 1st lease date and 50% on or before November 1st.

➤ ***Delinquent Rental Accounts***

The following process has been established for determining and accounting for deficiencies in rent payments for leases:

- ❖ Review Rent Payment Deficiency - Property Management shall review deficient rental accounts on the tenth of the month. The tenant shall be sent a "*Delinquent Long-term Receivable Invoice*." The tenant is also sent a *3-day Notice to Vacate* letter (see Appendix "B", Exhibit 10).
- ❖ Determine Whether to Evict - Property Management shall take further action on all accounts 45 days delinquent. Determinations shall give consideration to the rental rate, the likelihood of obtaining a new tenant, start of construction, possible loss due to vandalism, the tenant's property maintenance record, the tenant's probable ability to pay the rental charge and the tenant's payment record.

Failure to comply with the terms of a lease includes, but is not limited to, nonpayment of rent, holding over after termination of the lease, or failure to maintain the premises or otherwise holding contrary to, or in violation of the terms of the lease.

- ❖ Statement of Delinquent Account - It is the responsibility of Property Management to prove the amount due on a delinquent account. Delinquent rental shall be the amount of rent due and unpaid under the terms of the lease. In determining delinquent rent chargeable against the account, consideration shall be given to any rental deposit. Any balance remaining in the rental deposit fund shall be returned to the tenant.
- ❖ Filing Claims to Collect Damages - Property Management shall obtain possession of the property by filing suit in Small Claims Court and shall document the records of any amounts not collected as uncollectible. When delinquent rent or our claim exceeds the \$4,000 jurisdictional limit of the Small Claims Court, the Attorney General staff shall be requested to bring the action in the District Court or turned over to the Iowa Department of Revenue and Finance pursuant to Iowa Code §421.17(34) <http://www.legis.state.ia.us/lowaLaw.html>. The Department of Revenue and Finance will collect debts per the terms of a 28E agreement between the DOT and Department of Revenue and Finance. Submittals to the Department of Revenue and Finance shall be handled through the Lease Coordinator and under the general supervision of the Chief Property Manager.
- ❖ Collection by Collection Agency - When attempts to collect rent fail, it is permissible to contract with a collection agency, or preferably the Iowa Department of Revenue and Finance, to recover debts owed and other damages.

- ❖ Collection by Deduction from Relocation Assistance Payments - If a tenant is also a displaced person entitled to relocation assistance payments, unpaid rent may be collected by deducting rent from relocation payments. Property Management coordinates these types of collection with the Relocation Assistance Supervisor.

➤ ***Documentation of Files***

Effective Property Management and Lease Administration requires flexibility. Warranted departures from standard practices will occur. These decisions accompanied by the rational considered must be documented in the lease files. Examples of departures are provided.

- ❖ Reductions in rent
- ❖ Rental allowances for tenant provided labor
- ❖ Forgiveness of back rent
- ❖ Mutual benefit or rental rates below market value

The above departures may be prudent and necessary in individual situations. The basis for the decision and supporting rational must be documented in the lease file through notes, estimates, or memorandums to the file.

Unusual agreements may also be necessary in specific, individual situations. Decisions involving these types of situations must also be documented through the lease file. A few examples are provided.

- ❖ Police or Fire agreements
- ❖ Salvage agreements
- ❖ Mutual benefit agreements

CANCELLATION / TERMINATION OF LEASES

We must consider leases in force at the time of land disposal. Leases on land to be disposed can either be terminated or modified to exclude the land to be disposed. The procedure for these types of lease terminations are the same procedures used in terminating leases for clearing land when preparing for highway projects.

If the property is sold without terminating the lease, the DOT will retain all rental payments until the full amount of the purchase price is paid. Rents may be prorated as of the date full payment is received for the land. Land being sold with a Farm Lease shall be sold subject to the existing lease.

Normally, Residential Leases are canceled in order to have possession before the property is needed for the project or other public purpose. The land or improvements may be needed for highway construction, or Property Management may need possession for disposal purposes or the property may be vacated for other reasons.

Eviction procedures shall be used to cancel leases for the tenant's failure to maintain the premise, or for nonpayment of rent or deterioration of the property to a less than decent, safe and sanitary condition.

The following guidelines have been established for canceling Residential and Commercial Leases:

➤ ***Noncompliance with Rental Agreement***

If the tenant has failed to comply with the rental agreement, except for nonpayment of rent, we shall send a written notice specifying the areas of the lease that have been breached. The notice shall provide the tenant 14 days in which to remedy the breach, and if the tenant fails to do so the lease will terminate on a specified date not less than 30 days after tenant's receipt of the 14-day notice of breach of agreement. If the same act or omission recurs (within six months for Residential Leases), we may terminate the lease upon at least 14-days written notice.

➤ ***Terminating or Canceling Leases for Nonpayment of Rent***

Leases contain lease cancellation clauses that authorize the DOT to cancel or terminate leases for nonpayment of rent upon 30 days notice. This notice for Residential Leases must also be given in the manner required by the Uniform Residential Landlord and Tenant Law.

If residential rent is unpaid when due, we shall send a three-day notice of nonpayment stating that the rental agreement will terminate if the rent is not paid in three days on a specified date (see Appendix "B", Exhibit 10). If unpaid, a second notice is sent stating that the Residential Lease is terminated on a specified date not less than 30 days after the tenant's receipt of the three-day notice of nonpayment. If we accept the late rent we have waived our right to terminate for nonpayment of rent.

If the tenant remains in possession after we have terminated the residential rental agreement, the tenant can be evicted as a Tenant Unlawfully Holding Over. We shall bring an action for possession and to recover actual damages sustained by the DOT and reasonable attorney's fees.

➤ ***Month-to-Month Tenancies***

Residential and Commercial Leases are typically not renewed for another one-year term. After the first year, DOT standard lease forms allow the tenant to remain in possession as a month-to-month tenant.

Month-to-month tenancies may be terminated by written notice given to the tenant at least 30 days prior to the periodic rental date specified in the notice. If a month-to-month tenant unlawfully holds over, we may bring action to obtain and recover possession, for the payment of actual damages sustained and for reasonable attorney's fees.

➤ ***Farm Lease Cancellation Procedure***

Farm Leases shall terminate or be canceled in the manner specified by Iowa Code §562.5, 562.6, and 562.7 <http://www.legis.state.ia.us/IowaLaw.html>, and discussed in the following paragraphs:

Farm Leases for premises of thirty-nine acres or less which specify a time for the termination of farm tenancy, even though both occupied and cultivated, shall terminate automatically at the time agreed upon without notice. As a courtesy, we will send the termination notice and also keep the field offices aware of the status.

All Farm Leases of forty acres or more, when the premises is both occupied and cultivated and the tenant is not in default in the performance of the terms of the lease, continue automatically for the following crop year upon the same terms and conditions as the original lease unless written notice for termination is given either by the DOT or the tenant.

The Lease Coordinator shall automatically terminate all farm leases over 40 acres every July, and send the applicable Notice of Termination. If the property is still available for lease, the Property Manager may write a new lease effective the following crop year.

Farm Leases when the tenant is in default in the performance of the terms of the existing lease will not continue for the following crop year. This is true even though the DOT fails to provide written notice for termination of the lease.

➤ ***Notice of Termination of Farm Tenancy***

When termination of farm tenancy is required, a Notice of Termination of Farm Tenancy is sent (see Appendix "B", Exhibit 11). The lease may have granted a right to the tenant to renew a Farm Lease. Both rights must be canceled in order to obtain possession of the premise at the end of the term. Cancel the tenant's automatic right of renewal under the law by sending the required Notice of Termination of Farm Tenancy. Cancel the tenant's right of renewal under the lease by sending notice of such cancellation, in writing, as required under the terms of the lease.

The title of the notice should include, "...and cancellation of right of renewal." The body of the notice should include, "...This notice is given to you in accordance with the provisions of Iowa Code §562, and Paragraph ____ of your lease."

➤ ***Consent for Early Termination***

Consent from the farm tenant must be obtained in any case when possession of the leased premise is required in advance of the time in which the lease may be terminated. All such consent shall be obtained in writing and, when necessary, the lease shall be renegotiated, modified or otherwise adjusted to reflect the terms or conditions of any such adjustment. Property Managers negotiate such early terminations and may agree to pay for field preparation and other similar damages or losses.

➤ ***Certified Mail Notice Required***

Notices to quit shall be sent by certified mail, return receipt requested, as authorized for residential tenancies in Iowa Code §562A.8(2) <http://www.legis.state.ia.us/IowaLaw.html> and for other leases in Iowa Code §562.7(3) (see Appendix "B", Exhibits 12 and 13). Copies shall be sent to the District Engineer, Area Maintenance Manager and Resident Construction Engineer. If keys are to be obtained by or delivered to the Resident Construction Engineer, this fact must be indicated on that Engineer's copy.

➤ **Selecting an Eviction Remedy**

In most instances, Property Management shall select remedies to effect eviction although sometimes the Attorney General staff's involvement may be necessary.

There are two basic remedies through which a tenant might be evicted. They are through an action to recover real property Iowa Code §646 <http://www.legis.state.ia.us/IowaLaw.html> or through proceeding for forcible entry or detention of real property Iowa Code §648. An Iowa Code §646 proceeding is a complete remedy in the sense that it can obtain possession and judgments for delinquent rent and property loss or damage. An Iowa Code §648 remedy is the quickest way to obtain possession (usually 15 days after sending a three-day notice to quit for nonresidential property), but the delinquent rental account cannot be collected through this remedy.

When the tenant has either vacated the premise or has made arrangements to vacate the premise, and there is no construction or other need for immediate possession, Property Management shall institute proceedings in Small Claims Court for the recovery of real property under Iowa Code §646.

When there is an immediate construction or other need for possession of the premise, and the amount of delinquent rent exceeds the rental guarantee, Property Management shall institute concurrently a proceeding in Small Claims Court for forcible entry and detainer to obtain possession and a proceeding to recover real property to obtain collection of the rental account. A similar recommendation shall be made in the case of known property loss or damage to the premises.

LEASE RENEWALS

All leases that are to be renewed should be periodically reviewed to ensure the terms and rental rates are still current and reasonable. We should review all leases annually, obtain and consider recommendations from the District Offices to determine if the lease should be renegotiated. Long-term rentals must be based on the current fair market value. These properties require inspection periodically and rent evaluated every two to three years. If necessary, these leases will not be renewed but will be renegotiated for the adjustment of rental rates. If the property is not being maintained or the terms of the lease are not being complied with, corrective measures must be initiated or the lease canceled.

➤ **Non-Farm Lease Renewals**

We do not renew leases when possession of the premises will be required during what would be the renewal term or when terms or conditions of the lease must be added or revised in order to be consistent with construction or other needs. When a lease will not be renewed, the lease shall be renegotiated in a manner consistent with needs for the property or the tenant shall be allowed to remain in possession of the premise as a tenant at will.

When a Residential Lease is to be renewed, send the tenant a letter of lease renewal 30 days in advance of the end of the lease term. The letter shall specify the monthly remittance. Property Managers shall request the tenant to make remittance for the first month of the renewal term. Do not send this letter if the lease is to be renegotiated or if this is to be a month-to-month tenancy at will.

➤ ***Farm Lease Renewal***

Property Management shall make an annual review of Farm Leases for construction needs and request lease management recommendations from the Districts. This review is normally made in June and July for the upcoming crop year, which is from March 1st to February 28th. Farm Leases, which terminate at the end of the term specified in the lease or as agreed upon, shall be reviewed and when practical, renewed. A Long-term Receivable Invoice which serves as a Lease Renewal Notice shall be first sent prior to September 1st. It shall identify the lease, state the amount of rental due and the date upon which payment is due. The notice shall be accompanied by a card instructing the Lessee to sign and return said card on or before October 1st and to indicate their intentions for the renewal of their Farm Lease.

If the tenant fails to submit rent when rent is due, a Delinquent Invoice will be sent on or about January 10th. When necessary, a third notice of delinquent rent will be sent on or about the 10th of February. (The second invoice may be marked "Second Notice" and the third invoice shall be marked "Final Notice".)

If a farm tenant fails to transmit rental remittance with a "Final" Delinquency Notice, a Property Manager shall obtain a new farm tenant.

All agricultural lease over 40 acres must be written as new leases annually.

Lease Inventory and Management Record

An inventory of leases shall be maintained. The lease inventory and Property Management lease file shall record lease management activity monthly. The Property Management Lease Coordinator shall prepare a monthly activity report for the Chief Property Manager.

OVERVIEW OF PROCESS

Now that you understand several of the terms and details of our Lease Program, we thought that a simple overview of the process might be helpful. In this way perhaps we can "bring it all together."

- ***The Property Manager Decides to Lease the Property***
 - ❖ Decision based on Project Property Management or request from customer
 - ❖ If necessary internal recommendations are obtained
 - ❖ If necessary obtain FHWA approval
 - ❖ Ensure property is suitable and available for leasing

- ***Rental Rate is Established***
 - ❖ Property Manager studies the local market
 - ❖ Property Manager considers other factors and establishes rental rate

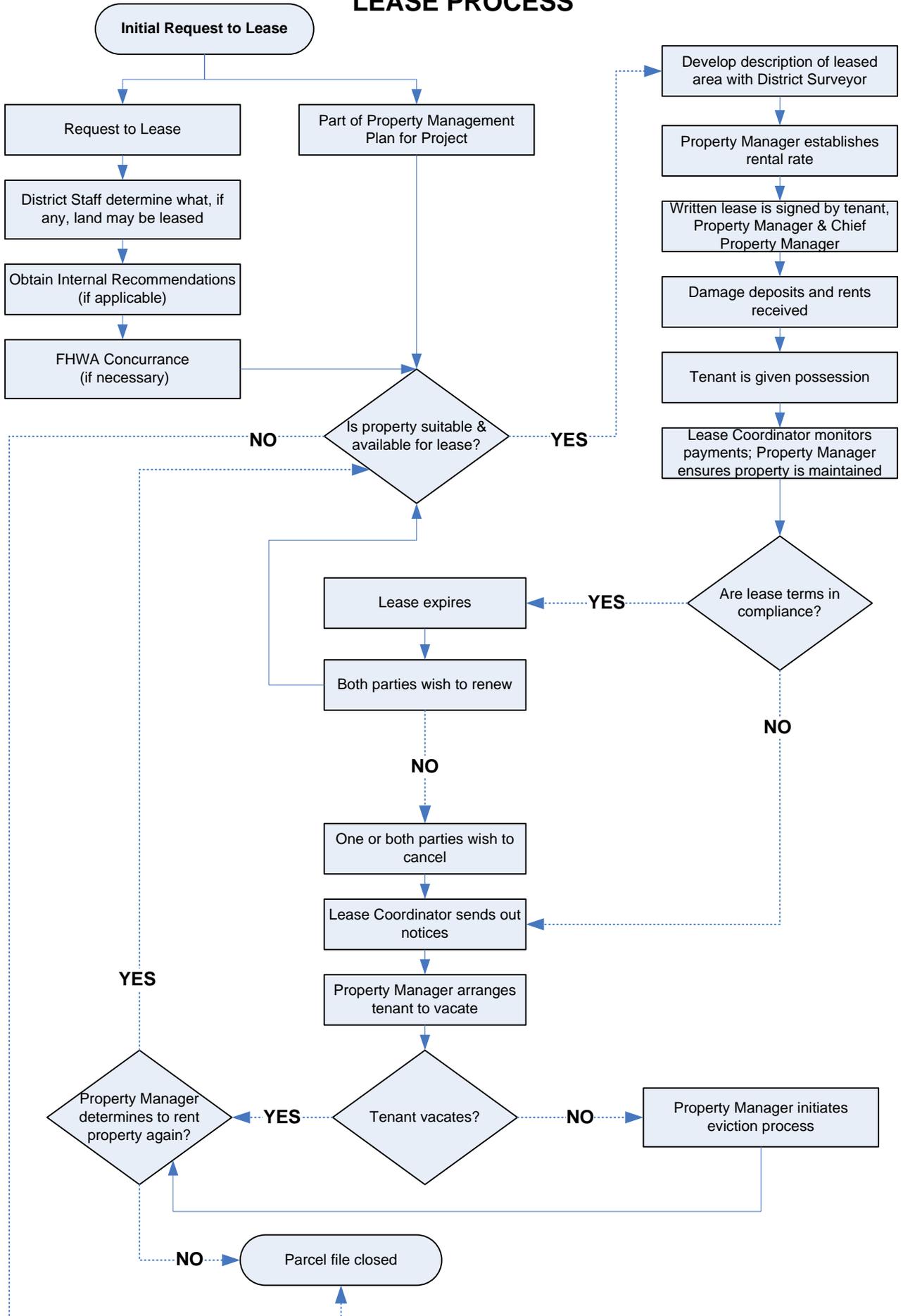
- ***An Agreement with a Tenant is Made***
 - ❖ Written lease is signed by tenant, Property Manager, and Chief Property Manager
 - ❖ Damage deposits and rents are received
 - ❖ Tenant is given possession

- ***Administer the Lease***
 - ❖ Lease Coordinator processes payments
 - ❖ Lease Coordinator ensures rent is current
 - ❖ Property Manager ensures lease stays in compliance
 - ❖ Property Manager sees that property is maintained and repairs made if necessary

- ***Renew Lease if Applicable***

- ***Cancel or Terminate the Lease***
 - ❖ Lease Coordinator sends applicable notices
 - ❖ Property Manager ensures tenant vacates or starts eviction process
 - ❖ Lease Coordinator handles eviction process involving Attorney General's staff if necessary

LEASE PROCESS



CHAPTER FIVE

Sales and Disposals of Improvements and Personal Property

Revised 5/2007

Personal property and improvements must be removed from land required for construction projects. We have two basic options for removing personal property and improvements; sell or dispose. This section of your manual will talk about both sales and disposals.

SALES

Our sales process may appear confusing at first glance, but when we break down the parts the process is straightforward. We have broken down sales of improvements and personal property into five areas, plus we provide an overview of the process:

1. *Making the Decision to Sell*
2. *Sales to Former Owners*
3. *Direct or Negotiated Sales*
4. *Competitive Public Sales*
5. *Administration or Technical Aspects of Sales*
6. *Overview of Process*

When improvements and personal property are sold the funds are returned to the Primary Road Fund, and money may be saved on demolition costs. First we need to decide if the improvements can and should be sold, so the appropriate starting place is making the decision to sell.

Making the Decision to Sell

Each Property Manager decides when to sell and not sell improvements. The decision is based upon a few basic criteria.

➤ ***Time***

We must first determine if the items be sold and removed without interfering with the overall highway project. The sale of an item cannot warrant delaying a project.

➤ ***Practicality***

We must determine if the sale of the improvements is practical. A sample of considerations has been provided.

- ❖ Is it practical for the items to be moved?
- ❖ After considering any potential liabilities, is a sale worth the effort?
- ❖ Is the time and expense of a sale worth what the items would probably sell for?

If the answer to these or other applicable questions is no, we should question if the sale is practical.

➤ ***Market for Items***

Items should not be marketed if there is not an interested market available.

➤ ***How and to Whom to Offer Items for Sale***

This part of the decision making process will be discussed in detail as we review the different types of sales. Sales may be offered to different parties in different ways, such as:

- ❖ Original owners
- ❖ Interested parties
- ❖ General public
- ❖ Direct or negotiated sales
- ❖ Public competitive sales

Once the decision has been made to sell and how we will offer items for sale, we are ready to proceed through the sale process.

Sales to Former Owners

Sometimes the former owners of real and personal property may want to retain or buy back their interest. These requests deserve serious consideration and DOT policy has historically encouraged sales to former owners. Iowa Code §306.23 <http://www.legis.state.ia.us/lowaLaw.html> provides purchase preference of land sales to former owners. Sales or disposals of improvements and personal property to former owners may occur at two different times.

➤ ***During Negotiations***

During acquisition negotiations, the owner may reserve the right to remove improvements and personal property as part of the acquisition contract. The contract will provide for a specified time period to remove the improvements. This right is normally described as an option to retain improvements and personal property at salvage value determined by Property Management.-

Failure to Remove Reserved Items - Should the original owner fail to remove improvements and personal property, additional time may be granted by the Property Manager so long as the extension does not interfere with construction. Additional time to remove the property may be denied to the original owner when, in the judgement of the Property Manager, the owner has not made a reasonable attempt to remove the property. In all cases, Property Management shall remove and dispose of the property in the manner determined to be in the best interest of the DOT.

- ❖ Determining Salvage Values - Estimating salvage or retention values on personal property, buildings and improvements located within the right of way is the responsibility of Property Management. Requests for values typically are generated from the Acquisition Section. Personal property generally consists of movable items not permanently affixed to or a part of the real estate. When the acquired improvements can be leased or sold to be moved, the Acquisition Agent must request Property Management approval prior to reserving fixtures to the former owner.
- ❖ Criteria for Salvage Values - Property Management salvage value estimates are based on past sales data, estimating the property's remaining useful life or utility, determining the scarcity of comparable or similar items and the sound judgement of the Property Manager. A value shall be placed on individual items of personal property. Consideration may include moving the improvements off the right of way. The Property Manager establishes an estimate for a specified amount, not a range of values. The estimate is then reviewed and approved by the Chief Property Manager or the Property Management Production Coordinator before being sent to the Acquisition Section.
- ❖ Determining Items that Should Not be Salvaged - There are situations when Property Management should not approve items to be salvaged or sold back to the owners. We have furnished three different situations along with examples. It is the responsibility of the Property Manager to recognize when reservation or salvage agreements should not be entered into and inform the Acquisition Agent when requests for salvage values are received.
 - *Time Restraints* - When time will not allow for the removal of items before the construction project is to start, we should refrain from entering into reservation or salvage agreements.
 - *Safety Issues* - When the owners salvage efforts would leave the remaining property in an unsafe condition or a public nuisance, we should not enter into reservation or salvage agreements.
 - *Damage To The Public Asset* - When we know the improvements can remain on the land and sold in place after the project, reservation or salvage of items will reduce the value of the public's assets and should be avoided.

➤ ***After Negotiations but Before the Highway Project Starts***

Sometimes after negotiations have been completed, owners decide they would like to retain ownership of items. We should attempt to provide these types of services to former owners when practical and when the interests of the public are not adversely impacted. The Property Manager may consider negotiating a direct sale to the former owners, provided a salvage estimate is prepared as previously described. The Property Manager may not negotiate a direct sale to former owners if any of the following situations apply:

- ❖ There is not adequate time to remove the improvements before the project has been let.

- ❖ The improvements have been sold or offered to someone else.
- ❖ The sale of improvements has been advertised to the general public.
- ❖ The property has been turned in for demolition.
- ❖ Salvage activities would interfere with the sound property management of the property.
- ❖ If the Property Manager believes the salvage efforts would not be in the best interest of the DOT or general public

➤ **Forms for Sales to Owner**

The two situations described will require the use of different forms in each case:

- ❖ Reservations During Negotiations - This type of sale is handled within the Acquisition Contract by the Acquisition Agent. The Property Manager must complete a salvage estimate signed by the Property Manager and approved by the Chief Property Manager (or Property Management Production Coordinator).
- ❖ Direct Sale After Negotiations - This type of sale is handled the same as any other direct sale. See the discussion of direct sales, the next area of your manual.

Direct or Negotiated Sales

Sometimes selling improvements or personal property through a competitive public sale is not practical. There are many situations when a negotiated direct sale is the only prudent or practical way to sell items. A few examples have been provided but this list should not be considered as the only situations when direct sales should be considered.

- ❖ Little or no market for the items to be sold
- ❖ Minimal value of the items to be sold
- ❖ Limited time available before the project contract letting
- ❖ Sale to another public entity
- ❖ No bids or no acceptable bids are received at a sale

In some situations land may be cleared of improvements or personal property by negotiated sale. A Bill of Sale may be used to document a negotiated sale of improvements or personal property (see Appendix "C", Exhibit 1). If the offer is acceptable, the bill of sale is processed as a voucher and constitutes proof of purchase (see Appendix "C", Exhibits 2 and 3). All items disposed of exceeding \$10,000 shall be approved by Staff Action.

The Property Manager will estimate a value for the item before a negotiated sale. In determining a reasonable sale price, consideration shall be given to the property's salvage value, its mobility, its utility, the nature of the probable market, its condition or state of repair, DOT removal costs and land clearance lead time. The original owner of improvements or personal property may be given an opportunity to purchase property through a negotiated sale at the property's salvage or retention value.

The buyer shall be required to pay sales tax on sales of personal property. Payment of sales tax due shall be paid at the time of the final settlement for the payment of the item. City sales tax shall also be collected when applicable.

Competitive Public Sales

The DOT recognizes that, when practical, all interested parties should be allowed an opportunity to bid on sale items. Competitive sales promote equitable treatment for the public, a better return on the sale of assets and provide an open atmosphere to conduct business. For these reasons and others, we offer public sales for buildings, fixtures and equipment when there is time to do so and there exists a general market for the sale of the property. We offer two types of public sales; our in-house sealed bid sale and auction sales.

➤ ***Sealed Bid Process***

This is our most common type of public sale. Sealed bid sales are handled totally by Property Management staff. The Property Management Section holds a sealed bid sale at least once a month, but additional sales are scheduled as needed. The more potential buyers we can locate for a sale the better. We use different approaches for attracting and notifying the public of our sales.

❖ Mailing List - Property Management maintains two mailing lists of prospective purchasers for land and improvements.

- The preferred list is an electronic format that notifies all members of every sale by E-mail from the Property Management Sales website <http://www.iowadot.gov/rightofway/propertymanage/bidder.htm>.
- A paper list is also maintained and names are added to the mailing list as requests are received. These notifications are mailed via the USPS. There is no charge for the mailing list and prospective purchasers may request information based upon:
 - Land and/or improvements
 - By County
 - By District
 - Statewide

Whenever we offer assets for public sale, notices are sent to those on the mailing lists and any other known interested party. The notice describes the improvements and personal property to be sold and informs those interested how to get information and bid forms.

❖ Web Site – Property Management maintains a web site <http://www.iowadot.gov/propmanage/> providing information of current offerings, past sales history, information as to how to bid on items, and contact information. Sales of improvements should include a picture of the item(s) to be sold.

- ❖ Advertising - Advertisements include the time and the date that bids are due, the general description and the location of the items to be sold, who to contact for bid forms and other pertinent information about the items for sale. We advertise in local publications but we can also advertise in other newspapers, trade magazines or journals when necessary to inform and attract prospective bidders. Proof of advertising shall be kept in the sale file.
- ❖ Signs - We also place "For Sale" signs where the improvements are located. The signs identify the Seller as the DOT and provide the Property Management telephone number for inquiries.
- ❖ Open House - It is not practical to show improvements every time a prospective purchaser would like to view what is being sold. Property Managers schedule open houses that allow prospective purchasers the opportunity to view what is being offered for sale.
- ❖ Sealed Bid Proposals - These forms describe what is to be sold and the terms of the sale. Sealed bid proposals can describe improvements, personal property and/or land. The proposals for improvements and/or personal property should contain the following items:
 - Set forth a general description of the improvements or personal property.
 - Describe a clear identification of applicable bid deposits and removal performance deposit requirements.
 - Provide a statement of the terms, conditions and restrictions of the sale.
 - Detail applicable conditions and restrictions for the moving or removal of the items offered for bid.
 - Include provisions notifying the bidder the property is to be sold "as is" and that the burden of inspection is upon the buyer and that the DOT makes no representation or warranties regarding the quality of the property.
 - Furnish return addressed envelopes clearly marked as a sealed bid.
 - Send bid proposals to any person requesting a form (see Appendix "C", Exhibit 4).
- ❖ Security of Sealed Bids - When the DOT receives the sealed bids by mail the bids are delivered unopened to Property Management. The bids remain unopened and secured in a designated locked place until the bid opening. We cannot provide any information concerning bids received to the public prior to the bid opening, for example, the number of bids we have received or the names of bidders.
- ❖ Opening the Bids - Bids are to be opened at the time and place designated per the sale notice. The bid openings are open to the public and anyone may attend. At a minimum, two Property Management staff shall be present. As the bids are read, all applicable information shall be put on the Bid Tabulation Form (see Appendix "C", Exhibit 5).

Consideration shall be given only to those bids that are received by Property Management on or before the time due and are accompanied by a bid deposit in the

form of a check or money order drawn in not less than the required amount. Cash will **not** be accepted.

- ❖ Sealed Bid Acceptance Recommendation - Following the opening of bids, Property Management must determine its recommendations. Typically the Property Manager and the Chief Property Manager prepare the recommendation together. Bids for improvements and personal property are usually recommended for acceptance as long the bid represents at least minimal compensation for the item and the other terms in the bid proposal are in compliance. There are instances when bids should be rejected. A few examples have been provided.
 - When conditions are placed on the bids by the bidder
 - When the bid is not made in accordance with the bid terms in the proposal
 - When the bid is not complete per the proposal terms
- ❖ Notify Successful Bidder - Property Management shall promptly inform the successful bidder that their bid has been recommended for approval and promptly inform the successful bidder again when the DOT has officially accepted the bid. The notice of official acceptance shall also request the balance due, if any. In the case of the sale of improvements and/or personal property, the notice shall require timely removal of the purchased item. The bid deposit from the successful bidder shall be retained. Unsuccessful bids and bid deposits shall be returned as soon as possible.
- ❖ Right to Waive Technicalities - We do reserve the right to waive technicalities and accept bids as part of the proposal forms. This allows waiving technicalities when in our judgement; the public is best served by waiving the technicality and accepting the bid. When in our judgement the public is best served we also reserve the right to reject all bids and withdraw part or the entire sale. Failure to timely submit a written bid proposal with a bid deposit is not considered a technicality.
- ❖ Purchase Payments - Payment is required as a condition of the acceptance of a sealed bid, a bid at an auction, and/ or as a condition of acceptance of a negotiated sale. The payment shall be in the form of a check or money order drawn in an amount not less than 100% of the bid or negotiated purchase price of the improvement or personal property. Cash will **not** be accepted. The purchase payment will be accepted when the DOT approves the sale and accepts the bid. The purchase payments shall be returned to the bidder or prospective purchaser if the DOT either fails to approve the sale, fails to accept the bid, or approve the negotiated purchase price. The purchase payment will be retained by the DOT when the bidder or prospective purchaser rejects his/her bid or negotiated offer of purchase, or refuses or fails to complete the transaction in accord with its terms.
- ❖ Unsuccessful Bidders - Unsuccessful bidders shall be notified of the amount of the high bid, and the name of the high bidder, as soon as possible and have their purchase payments returned with their notification.
- ❖ DOT employees may bid on items offered by public sale. However, Office of Right of Way employees may not bid or purchase items through Property Management sales.

➤ ***Auction Sale Procedures***

Usually we only sell personal property at auction sales. But in unique situations, we have considered selling land at auction. A discussion of auction sales has been included in the General Sales information section of your manual and the same basic rules apply for the sale of real or personal property by auction.

When Property Management decides to sell personal property or land at auction, we should attempt to locate auctioneers with prior experience in selling similar types of properties. In cases of specialized or unique items the Property Manager should try to supply bid proposals only to auctioneers with the appropriate experience. Property Management shall review the proposals received and recommend approval of the lowest acceptable proposal. A Staff Action shall be used to approve an auctioneer contract if the auctioneer's fee amount will exceed \$10,000.

If approved, Property Management notifies the approved auctioneer and proceeds with the sale. If not approved, we may either renegotiate the proposed agreement or try to obtain additional proposals. Sample auctioneer agreements have been provided (see Appendix "D", Exhibits 1, 2 and 3).

When there is a unique property that would require special expertise, or if time is of the essence, we may directly hire a qualified auctioneer, with the approval of the Chief Property Manager.

➤ ***Auction Sales require Completion of Specific Tasks***

- ❖ Proof of Advertisement - When the auctioneer is required to advertise the sale, the auctioneer shall furnish proof of advertisement prior to the sale.
- ❖ Auctioneer's Performance Bond - A reasonable auctioneer's performance bond may be required for the purpose of assuring that the sale will be held and that the proceeds of the sale will be deposited. When a bond is required it must be delivered to Property Management as specified prior to the date of the sale. Failure to timely deliver a required bond shall be reasonable cause for canceling the agreement.
- ❖ Duties of Auctioneer - The auctioneer shall offer for sale and sell all items listed in the sale inventory plus any additions, except when the terms of the agreement direct otherwise. The auctioneer shall collect, report and pay sales tax due pursuant to Iowa Code §422.48 and 422.49 <http://www.legis.state.ia.us/IowaLaw.html>. The auctioneer shall announce to the assembled prospective buyers all the terms, conditions and restrictions of both the sale and removal of any improvement or item of personal property.

The auctioneer shall collect the total proceeds on the sale of the personal property. The auctioneer shall collect not less than ten percent of the final bid on real estate being sold. Sale of real estate will require that the auctioneer accept only payment in the form of a cashier's check, certified check, money order, or personal check unless otherwise set forth in the conditions of the sale.

The auctioneer shall give the first copy of any Agreement and Bill of Sale (see Appendix "C", Exhibit 1) for sale items to the Property Management sale representative, the second copy to the buyer and the third copy may be used as the auctioneer's.

- ❖ Attendance at Auction Sales - A representative of Property Management shall attend auctions. This representative shall observe and assure compliance with all the terms and conditions of the auctioneer's agreement. The representative may assist the auctioneer to re-inventory items.
- ❖ Auctioneer's Closing Sale Procedures - The auctioneer shall be directed to promptly forward all Bill of Sale copies, the total proceeds of the sale and all bid deposits to Property Management. The proceeds shall be in the form of the auctioneer's business check made payable to the DOT. Sales tax proceeds will be provided by separate check. Any auctioneer's performance bond will be returned to the auctioneer upon payment of the sale proceeds check and the DOT receipt of bid deposits.
- ❖ Sales Tax Collection - Auctioneer's agreements shall require that bill of sale forms used for the sale of personal property inform bidders that payment of sales tax is required. Payment of sales tax due shall be paid at the time of the final settlement for the payment of the item. City sales tax shall also be collected when applicable.
- ❖ DOT employees may bid on items offered by public sale. However, Office of Right of Way Employees may not bid or purchase items through Property Management sales.

Administration or Technical Aspects of Sales

This area has been saved as a "catchall" for the other information you should know about sales. The information is not in any specific order.

- ❖ Lead-Based Paint - Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978, shall be notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems and an impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead based paint hazards from risk assessments or inspections in the seller's possession and to notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based hazards is recommended prior to purchase (see Appendix "C", Exhibit 6).

Federal Environmental Protection Agency regulations require that a "*Disclosure of Lead-Based Paint*" form and informational pamphlet be provided to every prospective purchaser of every pre-1978 house to be sold. Purchasers shall sign a "Disclosure of Lead-Based Paint and/or Lead-Based Paint Hazards" form provided by Property

Management and approved by the EPA. This form shall be kept in the sale file (see Appendix "C", Exhibit 6).

- ❖ Performance Bonds / Deposits - Sound business practices support requiring a bond or deposit that is returned when the buyer fulfills their obligations of the sale. For example, when a house is sold to be moved we require a deposit. After the buyer has removed the house and satisfied the other terms of the agreement, the deposit is returned. Should the buyer fail to live up to the terms, all or part of the deposit may be kept to cover costs incurred to the State as a result.

We have historically called these deposits performance bonds. A better term may be performance deposit. The performance bond/deposit is generally handled in the form of a cashier's check, certified check, money order, official bank check, or personal check that is cashed by the DOT. Cash will not be accepted. Funds are returned to the buyer upon completion of the sales agreement via a State Warrant.

Performance bonds/deposits may be required as a condition of an auction bid, or for property sold by sealed bid or by negotiated sale when the buyer agrees to remove or demolish improvements. The deposit guarantees removal of the property and completion of the other applicable terms of the sale. The amount required should reasonably reflect the cost of the removal, storage and resale or disposal of the property should the buyer fail to perform. Should the buyer refuse or fail to timely remove the property, the transaction may be declared in default. The performance deposit for any transaction declared in default shall be retained. The proceeds of the deposit shall be accepted as payment for any loss, damage or expense by the party's failure to timely remove the property. Collection or deposit procedures shall be the same as for rental guarantee and property damage deposits.

- ❖ Possession of the Purchased Item - Possession of the purchased item shall be given to the purchaser upon full payment of the total bid. When a performance deposit is required, the deposit shall be delivered to Property Management before possession is given to the buyer, per the terms of the agreement. The performance deposit shall be returned to the buyer upon satisfactory completion of the agreement terms.
- ❖ Removal of Purchased Items - The buyer shall be required to remove the purchased item within the time specified in the conditions of the sale. When no condition is made, the purchaser shall remove the item within 30 days of the sale date. Should the purchaser fail to remove the item, Property Management may sell, remove, or dispose of the item as it sees fit. The purchaser shall be notified of the default and the performance bond will be retained by the DOT in accord with the terms of the agreement.
- ❖ Sales Tax Collection - Auctioneer's agreements shall require that bill of sale forms used for the sale of personal property shall inform all parties that payment of sales tax is required. Payment of sales tax due shall be paid at the time of the final settlement for the payment of the item. City sales tax shall also be collected when applicable.

- ❖ Moving Houses, Structures and Loads of Excess Weight - The buyer is solely responsible for obtaining permits to move the house or structure. The Bid Proposal Form shall include the following statement: *IMPORTANT NOTE TO BIDDERS: PERMITS ARE REQUIRED TO MOVE SOME ITEMS ON CITY STREETS AND IOWA HIGHWAYS. YOU ARE ADVISED TO CONTACT IOWA DEPARTMENT OF TRANSPORTATION PERMIT CENTER, DES MOINES, IOWA. TELEPHONE NO. 515-237-3264 FOR MOVING DISTANCE AND PERMIT INFORMATION PRIOR TO SUBMITTING YOUR BID.* That office is responsible for the issuance of permits to move vehicles and loads of excess size and weight. Rules to do so are contained in the Administrative Code as required to implement Chapter 321E, Iowa Code <http://www.legis.state.ia.us/IowaLaw.html>. Bills of Sale or other agreements selling such property shall make the buyer fully responsible for obtaining and complying with all permit requirements of the law.

OVERVIEW OF PROCESS

An overview of the sales process has been provided for your future reference.

➤ ***Making the Decision to Sell***

- ❖ Is there time?
- ❖ Is it practical to sell?
- ❖ Is there a market?

➤ ***Sales to Former Owners***

- ❖ As part of the negotiated acquisition contract
- ❖ As a direct/negotiated Property Management sale before construction

➤ ***Direct or Negotiated Sales***

These types of sales are applicable when:

- ❖ Little or no market for the items to be sold
- ❖ Nominal value of the items to be sold
- ❖ Limited time available before the project contract letting
- ❖ Sale to another public entity
- ❖ No bids or no acceptable bids are received at a sale

➤ ***Competitive Public Sales***

❖ Sealed Bid Sales

- Send notices per mailing list
- Advertise
- Hold open house if applicable
- Open sealed bids day of sale
- Recommend acceptance/rejection
- Notify bidders of sale outcome
- Process payments

❖ Auction Sales

- Select auctioneer
- Ensure sale is advertised
- Attend sale
- Audit Auctioneers final records
- Process payments

➤ ***Administration or Technical Aspects of Sales***

DISPOSALS

We have talked about sales of improvements and personal property, but often we cannot sell these items and the right of way still needs to be cleared. In these cases we need to simply dispose of the unwanted items. This discussion has been divided into four areas:

1. *Trees and landscaping*
2. *Disposal through internal use*
3. *Historical Preservation*
4. *Demolitions, Asbestos and Removal Agreements*

Trees and Landscaping

We often receive requests to buy trees and shrubs on land that the DOT has acquired. The DOT has maintained a long-standing policy not to compete with local nurseries by selling nursery stock.

Iowa Code §177A, Code of Iowa Crop Pests and 21 IAC 46 (Crop Pests) <http://www.legis.state.ia.us/lowaLaw.html> describes requirements necessary for the DOT to sell any tree or shrub. In order to sell a tree or shrub to be transplanted, a qualified and knowledgeable individual must inspect the item for the presence of disease and insect pests. If any plant material is found to be diseased or infested with pests, it will not be offered for sale. If the tree or shrub is found healthy, a value must be determined and the item must be advertised and bids must be accepted. The DOT cannot guarantee or warrant the item. Considering these expenses and the past experience of very minimal amounts received, it is not economically feasible or practical to sell trees/shrubs.

Requests to purchase trees for firewood are also denied because of the liability exposure resulting from these types of activities. The liability exposure far exceeds the monetary amount received from the sale of the trees.

There are several opportunities for the Property Manager to consider when the DOT purchases trees and shrubs. We can notify the DOT Roadside Development personnel to determine if the DOT can utilize the items and move them to DOT facilities. If a large stand of nursery stock is acquired and the DOT does not have a use, a sale may then be feasible. Prior to any sale, an inspection to certify health must be completed, trees would be tagged, values determined, advertisements made and bids accepted. In instances where there is nursery stock and the DOT cannot utilize the stock, we may consider providing the stock to local public agencies for their use. In the case where there is marketable timber (walnut lumber, etc.), the trees which could be sold must be identified and marked and would then be advertised and offered for sale as a lump sale item.

The most common, as well as most practical option, is to clear the right of way through a clearing and grubbing contract. These contracts are let through the Office of Contracts.

Disposal Through Internal Use

Different groups within the DOT can often use improvements and personal property. Trees and landscaping are moved to serve other DOT properties. Metal buildings have been successfully moved and used by DOT maintenance staff. Property Managers should always be looking for ways we can utilize improvements and personal property internally.

Historical Preservation

Concurrence from the Office of Location and Environment must be obtained prior to the disposal of any historical property. Special interest groups occasionally express interest in acquiring items of historical significance that may have little or no value and are to be demolished. A waiver releasing the DOT from all liability should be obtained from the interested parties before allowing them to enter DOT property if a regular Bill of Sale is not used. In certain situations, agreements entered into by the DOT, SHPO (State Historic Preservation Officers) <http://www.nps.gov/history/nr/shpolist.htm> and other interested agencies may mandate the disposal process for historical improvements.

Demolitions, Asbestos and Removal Agreements

In some situations, the most efficient disposal of improvements or personal property is demolition or clearing. The most common process we use for a demolition is submitting a request for demolition through the Office of Contracts. This process is discussed extensively in the "Clearing the Right of Way" section of this manual.

However, the Property Manager may find it necessary to avoid unreasonable loss or delay, to have the land cleared of improvements and personal property by demolition or removal agreement. Demolition agreements may be sought on a plus or minus basis so that the contractor specifies what they offer to pay or what they propose to charge on a single form. The need to pursue an agreement usually occurs when no auction or sealed bid is received, when bids are rejected or when the buyer fails to remove the property in the time allotted.

When experience indicates a lack of a probable market for a particular improvement, Property Management may clear the right of way by demolition or removal agreement without attempting a sale of the improvement. Normal procedure is to request to the Office of Contracts to place the improvements on a demolition/grading project letting. Agreements with a demolition contractor obtained by Property Management usually are with local building or demolition contractors to dispose of individual or miscellaneous improvements.

Improvements may also be moved from required right of way to excess land to stockpile or organize improvements or personal property for the ultimate sale or disposal. Stockpiling may avoid loss of assets and ensure timely clearance of the required right of way. Stockpiling may be useful when storing items for other units within the DOT. Alternate sites may include land other than excess land.

Asbestos removal activities are the responsibility of the Office of Location and Environment.

CHAPTER SIX

Basics for Sales and Disposal of Land

Revised 5/2007

Public land disposal is a highly regulated process ensuring private and public interests are all considered. Detailing these procedures requires a significant portion of this manual. This Chapter will cover basics that apply to both sales and other types of land disposals. Four basic areas will be discussed, plus we provide an overview of the process.

1. *Authority to Sell / Dispose and Approvals Necessary*
2. *Determining the State's Ownership*
3. *Determining Present and Future Land Needs (Internal Recommendations)*
4. *Survey Plats and Legal Descriptions*
5. *Overview of Process*

After these discussions we will be prepared to proceed with information for sales and other types of disposals of land.

AUTHORITY TO SELL / DISPOSE AND APPROVALS NECESSARY

Sales/disposals of land and improvements are regulated through laws, regulations and policies. This chapter of your manual hopes to provide a basic understanding of what these requirements are and where the requirements may be found.

➤ ***Disposal of Land With a Federal Interest***

In recent years our federal partners have provided the states greater latitude in all right of way processes, including property management and land disposals. Lands acquired as excess or uneconomic remnants and shown as excess on the final Right of Way plans may be disposed of without prior FHWA approval <http://www.fhwa.dot.gov/legsregs/legislat.html>. Present DOT policy requires that we shall not dispose of land or rights in land on federally aided projects by negotiations, except when negotiations are based on current appraised market value.

When FHWA approval is required, requests for the disposal of land shall show facts supporting the land will not be needed for highway purposes in the foreseeable future. The requests shall state that the right of way being retained is adequate under present day standards for the highway involved and the disposal will not adversely affect the federal aid highway facility or the traffic thereon.

The following airspace uses will be sent to FHWA for prior approval before disposal:

- ❖ All disposals of Interstate airspace
- ❖ All proposed easements on Interstate airspace

In the past FHWA required a "credit" whenever property purchased with any federal money was sold. FHWA now requires that a credit or that the money be used in other highway projects eligible for Title 23 funding. The DOT has adopted the policy that all proceeds realized from the sale/disposal of assets must be deposited into the Primary Road Fund and therefore used on Title 23 eligible projects.

➤ **State Law**

Perhaps the best place to start our discussion on State law is the Code Section that authorizes the DOT to sell land.

❖ Iowa Code §306.22- Sale of Land for Cash <http://www.legis.state.ia.us/lowaLaw.html>

This section of the Code contains two separate grants of power to the DOT to sell land. The first is a grant of authority to sell land "for cash" and the second is a grant of authority to sell land "on contract."

The first sentence of the Section authorizes the DOT to sell for cash, "any tract of land...when...the tract will not be used...." There are no restrictions on the power to sell land for cash in the Section other than the last sentence.

The second unnumbered paragraph of Iowa Code §306.22 <http://www.legis.state.ia.us/lowaLaw.html> is a separate and additional grant of authority to sell land. "The Department may contract for the sale of any tract of land subject to the following terms and conditions...." This paragraph was added to the Section in 1975 as a result of a Right of Way drafted and DOT sponsored legislative bill. There are limitations on the authority to sell land on contract, all of which are set out in the numbered subparagraphs of the second unnumbered paragraph of Iowa Code §306.22, and none of which conditions apply to sale of land "for cash."

The last sentence of the Section makes all sales, whether by cash or on contract, subject to the rights of utilities in possession. This last sentence establishes that the conveyance by the State does not adversely affect the right of utilities in place at the time of the disposal to occupy the premises.

The words "for cash" as they appear in Iowa Code §306.22 <http://www.legis.state.ia.us/lowaLaw.html> mean "and not for credit." Our DOT policy has interpreted as payment of the fair market value, as measured in terms of money, for all land sold. Normally, money is received by the DOT in payment for land being sold, but value received other than cash can be considered. The value other than cash should be documented and justified so that a reasonable person can read the justification and understand why we believe the public received fair market value for the property. The land patent provisions of the law further support this fair market value standard, which require us to inform the State Land Office of the appraised value of the property.

❖ Iowa Code §306.23 <http://www.legis.state.ia.us/lowaLaw.html>

This code section is a procedural statute. The first sentence of Iowa Code §306.23 requires the DOT to send by certified mail to the last known address of the present owner of adjacent land from which the tract, parcel, piece of land, or part thereof, was originally purchased or condemned for highway purposes and to the person who owned the land at the time it was purchased or condemned for highway purposes, notice of the DOT's intent to sell the land, the name and address of any other person to whom a notice was sent, and the fair market value of the real property based upon an appraisal by an independent appraiser .

These directions can be confusing, so we will try to provide a less confusing explanation. Two different ownerships may be entitled to purchase preference. The owner at the time of acquisition is the first ownership. The second ownership is "the present owner of the adjacent land from which the tract was acquired." The Property Manager must be careful when identifying this ownership. Lands that are next to or abut the property to be disposed may not be the tract "from which the property was acquired" and therefore a purchase preference is not provided.

The second sentence of Iowa Code §306.23 requires the DOT to give an opportunity to the present owner of adjacent property and the person who owned the land at the time it was purchased or condemned for highway purposes to be heard and make offers within sixty days of the date the notice is mailed for the tract, parcel or piece of land to be sold. An offer, which equals or exceeds in amount any other offer received, and which equals or exceeds the fair market value of the property shall be given preference by the DOT (see Appendix "C", Exhibit 7).

There is no language in Iowa Code §306.23 that indicate the legislature intended to limit or restrict the DOT power to sell land for cash. The notice provisions of Iowa Code §306.23 are mandatory. When there is no adjacent property owner because the entire parcel was originally acquired, the notice to adjacent property owner provision does not apply. However, the provision pertaining to the owner at the time of acquisition does apply. Adjacent property owner notices are sent in every case when a portion of the original tract from which it was acquired is being offered for sale.

❖ Iowa Code §306.42 - Transfer of Right of Way

<http://www.legis.state.ia.us/IowaLaw.html>

This section of the Code provides a limited grant of authority to convey highways and adjacent property to other governmental entities for roadway purposes. For example, the DOT constructs a bypass for a community, and upon completion of the project the former highway is to become a city street or county road. This section of the Code allows the DOT to transfer the right of way for roadway purposes. This Section does not require the public authorities receiving such conveyances to pay cash for the transfer. The compensation for such transfers is a token \$1.00. Land transferred to public authorities for other than highway purposes is transferred by DOT policy for its fair market value.

In the case of a transfer of a road from one highway authority to another, the consideration required is that there is an agreement between the two authorities. The receiving highway authority is not required to pay cash for a Quit Claim Deed to a

highway even though there may be an exchange of money required by the agreement to bring a road to a certain state of repair or to pay the receiving authority to do so.

Sub-paragraph two also contains a second authorization to the DOT to transfer adjacent unused right of way located outside cities to county for use and benefit of the county conservation board whether held by easement or fee simple, as long as the land is suitable for purposes specified in Iowa Code §350.4(2) and is adjacent to roads which the county maintains jurisdiction. If title is only an easement for road purposes, it is in the county's best interest to purchase underlying title. By Property Management policy these lands are transferred to local conservation authorities for their appraised fair market value.

- ❖ Iowa Code §306.39 and 306.40 - Floodway Easement Agreement
<http://www.legis.state.ia.us/lowaLaw.html>

These sections are special statutes granting authority to the DOT to convey flowage easements to the Federal Government. These statutes are used to support the establishment of federal water control, dam, and park and recreational projects. Flowage easements are conveyed for no consideration other than an agreement between State and Federal authorities for the construction of such projects (see Appendix "E", Exhibit 1).

- ❖ Iowa Code §15.272 - Welcome Centers <http://www.legis.state.ia.us/lowaLaw.html>

This section grants authority whereby the Department of Economic Development and the DOT are to jointly establish a statewide plan for developing and operating welcome centers throughout the state. The DOT shall arrange to acquire title to land and buildings for use as state-owned welcome centers. The DOT may use any funds available including Federal grants for these purposes. In this context, right of way may be used for the above purpose.

➤ ***Iowa DOT Policy and Procedures***

Policy number 300.02 of the Iowa DOT Policy and Procedures Manual requires approvals through Staff Actions for certain types of sales/disposals. A brief description of those transactions requiring a Staff Action approval has been provided.

- ❖ Jurisdictional transfers of roads
- ❖ Disposal of excess Facilities properties
- ❖ Excess Right of Way or Facilities properties over \$10,000

DETERMINING THE STATE'S OWNERSHIP

Prior to the sale or disposal of land, Property Management must determine the type of ownership the State holds, for example, fee title or easement. A State Patent disposes of Land owned by the State in fee title. Land held by the State by easement for highway or highway related purposes is disposed of by abandoning the easement. More detailed explanations of these types of disposals are provided later in this manual.

An examination of the original acquisition and conveyance documents is necessary to make this determination. These records are located in the Right of Way Record Center in the Property Management Section. We have included a brief list of concepts you may use in your examination of title.

➤ ***Interpreting Acquisition Documents***

Acquired prior to 1956 under the authority of what is now Chapter 306A, the acquisition language usually would read: _____

Acquired post 1956 under Chapter 306A:

- (1) Deed: "For road purposes and for use as public highways."
- (2) Condemnation: "Property in _____ County for highway purposes."
or
"Real Property for Primary highway purposes."

This language was omitted. Added "The Grantors warrant to defend the title to said premises."

This language was omitted. Added "Fee title sought to be appropriated."

The Attorney General’s staff and the Office of Right of Way have agreed that the pre-1956 acquisitions acquired only easements for highway purposes unless further language in the specific instrument or proceeding provide more specific language. Any lands acquired under the authority of Iowa Code §306A <http://www.legis.state.ia.us/lowaLaw.html> using current acquisition language acquire a fee interest and disposal is to be made by a state patent.

➤ ***Permanent Easements***

As we have discussed, pre-1956 acquisitions will generally be permanent easements. Permanent easements have been and are still being acquired for purposes such as highways that do not require access control, local public service roads, and specific purposes such as to construct and maintain culverts, and highway related purposes.

Again, most pre-1956 acquisitions were by permanent easement. Post-1956 easements are clearly written in the conveyance document. Wording such as "Easement for Highway Purposes" or "Easement for the Construction and Maintenance of a Culvert" will be present.

➤ ***Temporary Easements***

Temporary easements are routinely acquired for borrow areas, detour or haul roads, equipment or material storage areas, and other highway purposes. These easements are acquired with automatic or semi-automatic reversion provisions within the acquisition documents. Some examples of temporary easement activities are borrow temporary construction maintenance uses. Temporary easements are handled and released by the Resident Construction Engineer.

➤ **Required Title Search**

Researching title includes a thorough review of the available acquisition and conveyance documents. Determining the remaining land from which the tract was originally acquired may require a similar review of abutting and neighboring properties. A specific search may be done if needed to review restrictions, conditions, exceptions or agreements that may affect either the State's right to sell the property or which will require conditions limiting the buyer's right to use the land. Applicable documents include Right of Way contracts, deeds, condemnation proceedings, and stipulations of settlement, land use agreements, access permits, court orders and other documents.

SELECT THE APPROPRIATE DISPOSAL PROCESS AND FORM OF CONVEYANCE

After we establish the type of ownership the State holds, we can determine the appropriate disposal process and conveyance document. The types of conveyances we can choose from are very limited. We have provided a list of the basic choices available. Detailed discussions of these choices will be provided later in this section of your manual.

❖ Land Held by Fee Title

- Convey by State Patent.
- Convey by Quit Claim Deed only when transferring the right of way for an operating highway to another governmental entity.

❖ Land Held By Permanent Easement

- Abandonment.
- Convey by Quit Claim Deed only when transferring the right of way for an operating highway to another governmental entity.

❖ Land Held By Temporary Easement

- Release of Easement.

DETERMINING PRESENT AND FUTURE LAND NEEDS (INTERNAL RECOMMENDATIONS)

Determining the DOT's present and future needs is the logical first step in the disposal process. Obviously we do not want to dispose of any property rights that are presently needed or will be needed in the foreseeable future, but we do not have the knowledge or expertise in Property Management to determine those needs. Maintenance Staff and Staff Engineers in the District are the appropriate starting place for determining present and future needs. If the District Staff determines the land should not be sold, interested parties should be notified and the efforts to dispose dropped. If District Staff agrees that the DOT no longer needs the property, we may proceed to obtain the other necessary internal recommendations.

➤ ***Necessary Internal Recommendations and Approvals to Sell or Dispose***

In order to make informed decisions about present and future needs we need input from other sources. Obtaining internal recommendations may appear as "red tape" but the DOT is a large organization and no one person can possibly be familiar with all the activities being planned. Obtaining internal recommendations is simply an effort to enhance disposal decisions.

Recommendations allow us to determine what land is needed for present and/or future highway right of way. These recommendations also determine what limitations or conditions must be placed upon land to be disposed. When we are asked to dispose of land in advance of the completion of construction or prior to the opening of the highway, it is necessary to coordinate with the District to confirm the location of the right of way line and to avoid conflicts with the contractor (see Appendix "C", Exhibit 8).

❖ Recommendations to dispose of land (see Appendix "C", Exhibit 9) shall be sent to:

- District Offices
- Office of Design
- Location and Environment
- Facilities Support
- Systems Planning
- Office of Traffic and Safety
- FHWA (when applicable)

Design will forward parcels to Roadside Development for review of any sites that may contain wetland, wildlife habitat, scenic vistas, quality vegetation areas or any sites that could be developed to support such uses (refer to DOT Policy and Procedures Policy No. 500.03).

Office of Traffic and Safety will provide access control requirements.

❖ Requests for Internal Recommendations - Should contain enough information about the property that the person responding can make an informed response. We have included a brief list of necessary data.

- A plat, plan sheet or other illustration showing the land from which the land was originally acquired.
- A plat, plan sheet, or other drawing showing the area to be disposed.
- The type of ownership held by the State.
- Project and parcel numbers of the area.
- Name of the owner at the time of acquisition.
- Copy of request letter.
- Other pertinent information.
- Recommended sales conditions.

- ❖ Resolve Conflicts in Recommendations - Sometimes we receive conflicting recommendations from our internal resources. Those recommending not to dispose should provide their concerns, identify how the land should be used while we hold it and indicate when we should again review for disposal. Conflicts that cannot be resolved may be referred to the Highway Division Director for an ultimate decision.

SURVEY PLATS AND LEGAL DESCRIPTIONS

We need a legal description and usually a survey plat to describe land to be sold or disposed. Iowa Code §354.4a, "Plats," and 355, "Standards for Land Surveying," <http://www.legis.state.ia.us/IowaLaw.html> provide the procedures necessary when parcels of land are divided solely by the conveyance of land for right of way purposes to the State, a City or a County. These types of subdividing do not need to meet the land survey platting or re-platting requirements set out in the Code of Iowa. Legal requirements for the development of right of way land acquisition descriptions is contained in Iowa Code §6A.20, "Description of Land Furnished."

Descriptions of land no longer needed for highway purposes must contain information sufficient to enable a competent land surveyor to locate the property on the ground and must be compatible with the description in the title abstract of the property from which it was acquired.

It is our policy to obtain a surveyor's description to adequately describe the parcel being disposed. A complete re-survey is not needed when the parcel can be described by referring to the description in the original abstract of the parent tract or by reference to the original title instruments of record. Property shall not be re-described when the entire originally acquired parcel is being disposed.

Descriptions for the abandonment of highway easements and the sale of parcels with only nominal market value shall be developed from original title instruments with only the necessary new survey to locate the right of way line. Easement abandonment and minor parcel descriptions shall be simplified when it is reasonable and practical. For example:

- ❖ Lot 15, except the west 10 feet thereof,
- ❖ the north 50 feet of the SE of SE, Section _____,
- ❖ all of the total property lying west of the westerly right of way line of Highway _____, as more particularly described from earlier title instrument of record.

➤ **Exceptions**

A surveyor's plat may not be required to sell or transfer land. Plats assist county auditors, recorders and assessors; and make DOT land ownership records easier to understand by graphically illustrating the location and description of land we dispose. Usually DOT land surveyors furnish a certified plat when they produce a new legal description. When certified plats are available, they are attached to and recorded with the disposal conveyance.

➤ **Information Property Management Furnishes to Surveyor**

Property Management furnishes the land surveyor with applicable information, documents, recommendations, proposals and data necessary to draft the descriptions. The Property Manager should notify the District Land Surveyor of high priority parcels and applicable time limitations.

➤ ***The Use of Private or Consultant Surveyors***

Sometimes we may find it necessary to hire a consultant surveyor. Consultants are only used with the agreement of the District Surveyor. If District Staff is unable to perform the work in the time required, we may need to consider the services of a Consultant Land Surveyor. Generally, we only consider using a consultant surveyor when the District Surveyor's workload will not allow for the work to be completed in-house or to expedite a low priority parcel.

The person(s) requesting the sale or disposal of land may be asked to incur the expense of hiring a private survey. In these cases, the prospective buyer voluntarily agrees to be responsible for the cost of the survey and description preparation. The following are examples of these types of situations:

- ❖ When the normal land disposal processing time is inadequate to meet the particular needs of the buyer.
- ❖ When the tract being considered for disposal is landlocked and has no potential for access to a public way.
- ❖ When it does not appear that any other party would have an interest in acquiring the property.
- ❖ When the tract does not have adequate value to warrant a publicly advertised sale.
- ❖ We can also have the prospective buyer hire the survey completed if the purchase agreement does not conflict with Iowa Code §306.23. Items that should be in such an agreement are as follows:
 - The sale price will be determined as a lump sum amount for the tract and not as a price per unit (square foot, acre, etc.) prior to Right of Way's acceptance of the agreement.
 - The potential buyer will contract with a Fee Land Surveyor, registered in the State of Iowa, to prepare a plat and description of the property to be disposed of on a form furnished by the District Land Surveyor.
 - The District Land Surveyor will review and approve the Fee Land Surveyor's work.
 - Upon receipt of the plat and description, Property Management will process and deliver the State Patent.

OVERVIEW OF PROCESS

This chapter of your manual has provided you with the basis for starting the sale or other type of disposal process. This overview intends to provide a brief recap.

- ***Authority and Approvals Necessary to Sell / Dispose***
 - ❖ Federal approval to sell/dispose
 - ❖ State laws governing sales/disposals
 - ❖ DOT Policies and Procedures

- ***Determining the State's Ownership***
 - ❖ Fee Title, Permanent Easement, Temporary Easement
 - ❖ Determine appropriate type of conveyance based on State's ownership

- ***Determining Present and Future Needs (Internal Recommendations)***
 - ❖ Start with field staff and engineers
 - ❖ Secure the other necessary internal recommendations
 - ❖ Resolve differences of opinion

- ***Obtain Legal Description and Survey Plat***
 - ❖ From District Surveyor
 - ❖ Private or Fee Surveyor

The information in this chapter of your manual applies to sales and other types of disposals of land. The process now changes according to the type of sale or disposal to be accomplished.

CHAPTER SEVEN

Sales Of Land

Revised 9/2008

Land sales develop in two ways, either a request is received from a prospective buyer, or when we complete construction projects and determine what land can be disposed. While Selling State owned land may seem complicated. Following the steps provided will provide a process for sales.

1. Determine the State's type of ownership
2. Determine the present and future land needs (internal recommendations)
3. Obtain survey or adequate legal description for the property
4. Establish value and terms for the property
5. Satisfy purchase preference requirements
6. Sale of the property
7. Complete administrative and/or record keeping activities

Please note that we have already discussed Items 1, 2 and 3 in the chapter "*Basics for the Sale and Disposal of Land.*" You may refer to that Chapter for any questions concerning those items. We will begin this chapter by discussing establishing value and terms.

ESTABLISH VALUE AND TERMS FOR THE PROPERTY

We often think of price as the driving factor in sales, but in many cases the terms of the sale may be as important, if not more important than the price. We should remember that the land was originally acquired to enhance the highway system. If the sale of the land creates a negative impact on the highway, any price received may not compensate for the loss. For these reasons, our discussion will begin with the terms, or sales conditions.

➤ *Sale Conditions*

The internal recommendations we receive establish the conditions the DOT may want to place on the sale. The Property Manager should include any known special conditions in the request for recommendations. Likewise, the people returning the recommendation should include conditions they feel should be included in the disposal. A few of the conditions that might apply to a sale include:

❖ Land Use Restrictions, Prohibitions Or Conditions

- *When Applicable* - Sales should not be restricted unless the condition is necessary to avoid interference with the public's use of the highway, preserve scenic beautification areas, enhance public safety, or to avoid causing material damage, loss, or inconvenience to abutting property owners.
- *Integrity Of The Highway* - We must also be concerned about the land under the highway. Subterranean interference needs to be prevented in those areas where mining operations could undermine the highway. We can accomplish this by

reserving to the State all mineral rights or the right to mine or remove material from the property.

- *Mineral Rights* - We should only consider retaining mineral rights in unique situations when we believe that failure to do so might jeopardize the highway system. Generally, we do not retain mineral rights. Should we need to retain mineral rights sample language is as follows:

"Mining, drilling, or other mineral or other similar surface or subterranean uses of the land shall be prohibited. This is not intended to prevent the drilling for, or the drawing and the use of water in support of any other lawful use to which the tract of land might be put."

or

"The State shall retain all mineral rights to the tract of land."

- *Condition Sale To Avoid Damage To Adjacent Property Owners* - Sometimes a sale might deny an abutting property owner who has enjoyed free and convenient access to the highway through the land we wish to sell. Sales shall be conditioned so that the owners legally using the property for ingress and egress can continue to do so. The land should be sold subject to a right of access across the property to the abutting land. The location of such access rights or driveways shall be specified in the sale description. We have provided the following language as a drafting guide.

"It is specifically provided that the land, the subject of this Patent, is being conveyed subject to all existing rights (or to the right) of ingress and egress across said parcel from Sta. _____ (North, South, East, West) side along the existing farm drive to the lands adjacent to the east line of the parcel as shown on the attached plat."

❖ **Sale Subject To All Easements Of Record** - These easements may involve:

- Utilities present at the time of sale
- Easements of record when the property was acquired and not extinguished
- Easements conveyed by the State

❖ **Access Restrictions** - Access must be controlled in a manner consistent with existing DOT rules and the type of access control regulating the highway where the property is located. The following language may be used when all access is to be prohibited:

"Direct access to (relocated) Primary Road No. _____ is prohibited."

The following language applies when access is to be by way of public frontage road only:

"Direct access to (relocated) Primary Road No. ____ is prohibited. Access shall be via public local service road connection."

When direct access is to be restricted this language may be used:

"Direct access to (relocated) Primary Road No. ____ is prohibited between Sta. _____ and Sta. _____ (here omit distance across, which no restriction is intended) and between Sta. ____ and Sta. _____," by access permit # _____,"

or

"Direct access to (relocated) Primary Road No. ____ is prohibited except at Sta. _____ on the (North, South, East, West) side of the highway."

When no access control is needed the conveyance is silent on the subject.

- ❖ Access Control Fencing Rights - Access control fencing clauses are to be inserted in bid proposals and State Patents to assure the DOT the continued right of entry to construct and maintain access control fence. These clauses shall be inserted immediately after the description and should be used on all excess land projects when an access control fence is constructed by the DOT. We have provided the following sample clause:

The State retains the right of entry thereon for the purpose of constructing and maintaining the right of way fence. The fence shall be maintained for vehicle access control purposes only. The State will be held blameless and without liability for fencing private property or maintaining the same. The buyer may pasture against said fence at their own peril and the State will be held blameless and without liability for fencing private property or maintaining the same to restrain livestock.

➤ **Establishing Value**

Sound and reasonable business decisions are based upon adequate information. Property Management activities are routinely audited to ensure that we are continuing to perform our jobs as stewards of the public's assets. We must have adequate written information to enable us to make reasonably informed decisions in accepting bids or offers. Therefore every sale file must contain written, documentation of value before being exposed to the market or offered for sale. Sometimes right of way acquisition appraisals and appraisal reviews may be helpful. When those resources are not sufficient, we need to either obtain an appraisal or an opinion of value.

Iowa Code §306.23 requires an independent fee appraiser to appraise parcels regardless of value. This Code sections pertain to any property that has been acquired for Highway Purposes. Fee appraisal contracts over \$10,000 must be approved through a Staff Action. A sample contract has been provided in Appendix "D", Exhibit 4.

When Iowa Code §306.23 is not applicable, property managers or staff appraisers may prepare the value opinions or appraisals for the land to be disposed. _

A competent reviewer must review Land Appraisals. Appraisal reviews are usually handled through the Appraisal Section, the Chief Property Manager, or designee before land is offered for sale. The review appraiser ensures adequate appraisal documentation has been provided, and determines the DOT's approved market value. The Chief Property Manager or the Property Management Production Coordinator shall determine if advertisements will include the property's appraised value.

It is accepted practice for us to provide a copy of the appraisal to another governmental agency after the sale is final for the purpose of obtaining funding, grants, etc., thus eliminating unnecessary public expenses of obtaining additional reports.

➤ ***Valuations prepared by Property Management Staff***

In specific and limited situations, we may utilize the skills of Property Management staff to value the land to be disposed. These situations are limited to low value, uncomplicated disposals. Property Management staff may not value property if doing so will conflict with state or federal requirements, for example with Iowa Code §306.23. The Chief Property Manager or the Production Coordinator must approve any valuation completed by Property Management staff.

The intent of Property Management staff valuations is to enhance the efficiency and reduce expenses involved in low value, uncomplicated land disposals. Often the administrative costs of land disposals may exceed the value of the land to be disposed. Staff valuations of land may be used as part of a streamlined disposal plan, provided all legal requirements are satisfied. This portion of the manual will attempt to provide examples for the implementation of staff valuations. The examples are not intended to provide a complete list of situations, but are intended to provide a guide.

In some cases the purchase preferences provided in Iowa Code §306.23 are no longer applicable, for example, if the tract to be disposed was acquired as a total acquisition and the owners at the time of acquisition are deceased. In this case if the disposal was a low value, uncomplicated disposal, we may consider staff to prepare the valuation.

In some cases the purchase preferences provided in Iowa Code §306.23 are no longer applicable due to a variety of reasons. For example the owners at the time of acquisition are deceased and the present owners of remaining land wish to waive their rights to an independent fee appraisal of the property in preference to a staff valuation.

In some cases the purchase preferences provided in Iowa Code §306.23 cannot be located. For example, when the owners at the time of acquisition cannot be located. After a diligent search by the property manager we may discover the only available address is no longer valid. Iowa Code §306.23 allows for the notice to be sent to the last known address. In these specific cases we may elect to rely on a staff valuation and send the notice to the last known address. The notice must contain language that acknowledges the value was not established by an independent fee appraiser and the

former owner is entitled to such a valuation. An acceptable letter and form requesting an independent fee appraisal have been provided in Appendix "C", Exhibit 14.

SATISFY PURCHASE PREFERENCE REQUIREMENTS

Refer back to discussions in the Chapter on "*Basics of Sales and Disposals,*" concerning Iowa Code §306.23. This section mandates purchase preference to the owners at the time of acquisition and the present owners of the adjacent property *from which the tract was acquired.*

We will accept the highest offer at, or higher than the approved value received within the 60-day time period.

If the land is not disposed of under the terms of Iowa Code §306.23, or no acceptable offers were received within the 60-day notice period, we may then provide a limited purchase preference to other governmental authorities who need the property for another permanent public use. This policy avoids spending of public funds for administrative acquisition costs through successive acquisitions of the same private property for different public purposes. Interested public entities shall submit all requests for a direct sale in writing. The request shall state the intended public purpose(s) for the property such as parks, city facilities, public works, fire stations, etc., and shall be signed by a responsible official of the authority.

The DOT reserves the right to provide a sale preference to another governmental agency provided that Agency requests such a preference, in writing, prior to notices of intent to sell being mailed to the public. As part of such a request, the requesting agency shall agree to retain the property for a permanent public use, state what the proposed use involves, and agree to pay the approved value or higher for the property. The DOT reserves the right to reject any and all requests for sale preference.

State agencies, cities, counties, school districts and other public authorities are afforded the opportunity to purchase property no longer needed for highway purposes at its appraised value, when they have a documented permanent public need for the property. When the intended use of the land by public agency is speculative, no preference will be shown. The agency must then bid as any other bidder from the general public. When the purchasing authority intends to use the property as a Transportation Corridor (highway, street, bike path), the land may be sold for \$1.00 and other valuable considerations.

Purchase preference shall first be given to State agencies, then to local governmental authorities. If more than one public authority requests a purchase preference the DOT will decide which entity may purchase the property. If a city and county are involved, the city shall receive the preference for land located within the city limits and the county shall receive the preference for land located outside city limits.

No preference will be given to quasi-governmental authority or quasi-public agency (e.g. Community Development Corporations). A preference may be given to a city when the land is needed to implement an economic development urban renewal plan as authorized by Chapter 403, Iowa Code.

Public authorities may be given a reasonable opportunity to pay for land they need for public purposes. The public authority may, for a short-term usually not to exceed three years, make payments to purchase the property. Public authorities shall not construct any permanent structures or improvements until the full amount of the purchase price has been paid.

If no acceptable offer is received when the property is offered in compliance with Iowa Code §306.23, and no acceptable offer is received from another public agency, the property shall be offered for sale in writing directly to all abutting owner(s). The abutting property is considered as any property that is contiguous to the property to be sold. Direct sale offers shall be considered from abutting owner(s) provided:

- The written purchase offer is received by the DOT within thirty days of the date the offer for sale letter is mailed.
- All applicable terms and limitations of the sale are accepted by the buyer.
- The purchase offer price is at or higher than the approved value.

SALE OF THE PROPERTY

We are now ready to actually sell the property. Sales are accomplished either through a direct or a competitive sale.

➤ ***Negotiated Or Direct Sales***

When disposing under Iowa Code §306.23, we will accept the highest offer at or higher than the approved value received within the 60-day time period.

There are limited circumstances when land may be offered for sale directly to an individual without the general public being notified. An *"Offer to Buy"* form is used (see Appendix "C", Exhibit 11). However, provisions of Iowa Code §306.23 *take precedence and must be adhered to*. Whether the provisions are applicable or not shall be determined by Right of Way Management and/or the Attorney General's staff. Examples of appropriate uses of direct sales (after compliance with Iowa Code §306.23) are as follows:

- ❖ Low Valued Property - A direct sale may be offered when the property has no independent utility or cannot be beneficially used by anyone who is not an abutting property owner. For example:
 - When there is no reasonable likelihood that any parties other than the abutting property owners would submit an equal or higher offer for the property
 - The property has no measurable market value or must be assembled with adjacent land in order to have value
 - The property is landlocked or damaged and has a very minimal value
 - The cost of advertising could exceed the current value of the property
 - As defined by Iowa Code §306.23, the adjacent property owner shall be given the opportunity to submit an offer

❖ Other Examples - The following are additional examples of direct sales. However, unless otherwise stated these types of direct sales cannot be accomplished until the requirements of Iowa Code §306.23 is first satisfied.

- *To Original Owner* - A direct sale may be offered to the original owner of the property when right of way design changes and it is possible to significantly reduce the acquisition cost for the required right of way. A resale of property to the original owner shall be made either for what the DOT paid for the property (including damages which are reduced or eliminated) or its appraised market value, whichever is appropriate.
- *Avoid Material Damage To Abutting Property Owner* - Iowa Code §306.24 states that property should not be sold in a manner that materially damages the abutting owner. A direct sale may be offered when a sale to anyone other than the adjacent property owner may cause material damage to the adjacent owner.
- *When an Offer Lower Than Approved Value is Received* - Sometimes parties with a purchase preference per Iowa Code §306.23 submit offers less than the approved value. These offers shall be considered. Property Management staff may recommend acceptance of these offers when the best interests of the public are served. For example in cases where there is little likelihood of receiving any higher offers through subsequent public sales. Or, when proceeding with further public sales does not warrant the time, expense, and commitment of resources.
- *When No Reasonable Bid Or Offer Is Received At A Public Sale* - We may offer land for sale directly when a public sale fails to produce a reasonable bid. Authority to either negotiate a direct sale or re-advertise the parcel for public sale shall be requested as part of the Staff Action rejecting all offers or reporting that no offers were received. If, as a result of negotiations, it appears that there may be more than one person interested, both shall be given a reasonable opportunity to make an offer. If more than two persons appear to be genuinely interested, the property may be re-offered at a public sale with notice to all persons expressing an interest.

When a negotiated or direct sale is used, the sale process becomes very simple. The prospective buyer must sign and submit an offer to purchase (see Appendix "C", Exhibit 10). The Property Manager will ensure that the offer to purchase includes the applicable and necessary terms and conditions as well as the price to be paid. The buyer must also include full payment of the land with the offer to purchase.

The offer to purchase is then approved by Staff Action, if necessary, and the transaction is completed. (Please refer to the discussion pertaining to "*Administration of Sale*" later in this section.)

➤ **Competitive Public Sales**

This area will provide information on the most common type of sale we offer, a competitive public sale.

❖ Notifications

Property Management maintains an electronic and a paper notification system. People are added to the mailing list as requests are received. There is no charge for the mailing list. People may request information based upon:

- Land and/or improvements
- By County
- By District
- Statewide

Whenever we offer land for public sale, notices of proposed public sale are sent to the parties on the mailing lists and any other known interested parties. The notice describes the land to be sold and informs those interested of how information and bid forms may be obtained.

We send sale notices by certified mail to abutting and adjacent property owner(s) to ensure they have received the notice. This certified mailing is done as a courtesy as abutting land owners have no statutory right to notice of a sale nor any purchase preference rights, and adjacent owners received their statutory preference in compliance with Iowa Code §306.23 (as previously discussed in this manual). The sale notices shall be in the standard bid form. (See Appendix "C", Exhibit 12)

Property Management also sends a copy of the real estate listing for the public sale to others within the DOT (see Appendix "C", Exhibit 11). Care should be taken to assure that these notices include a notation of the appraised or other value of the property. Copies are sent to:

- Office of Right of Way Director
- Director's Staff Division
- Office of Finance

Field Offices receive the real estate listing (see Appendix "C", Exhibit 11) and a copy of the bid form (see Appendix "C", Exhibit 12). These forms are sent to the following:

- District Engineer
- District Maintenance Manager
- Resident Construction Engineer

❖ Advertising - Property Management shall advertise the sale of land to be sold. The advertising shall contain several items of information.

- A brief description of the land including the terms
- Usually the approved value
- Information concerning where and when the land will be sold

- The time and date sealed bids are due
- Who to contact for information concerning the conditions of the sale and to obtain bid proposals

The ad shall be run in local newspapers and/or other appropriate local publications. The ad may also be run in area trade magazines or journals and other newspapers of broader circulation if the Property Manager feels such advertising is appropriate.

- ❖ Use of Realtors - Occasionally we may employ a real estate firm to sell excess land. This practice should be used only in instances when Property Management has been unsuccessful in marketing the excess land. The fee or service charge of the real estate firm shall be paid out of proceeds from the sale of the land.
- ❖ Sealed Bid Proposals - Forms that describe what is to be sold and the terms of the sale (see Appendix "C", Exhibit 12). Sealed bid proposals are prepared for the sale of buildings to be removed as well as for land with or without buildings. Bid proposals shall be sent to any person requesting a form. The proposals shall contain the list of items provided below (see Appendix "C", Exhibits 4 and 12):
 - A general description of the personal property
 - Clearly identified applicable bid deposits
 - A statement of the terms, conditions, and restrictions of the sale
 - Provisions notifying the bidder the property is to be sold "as is", that the burden of inspection is upon them, and that the DOT makes no representation or warranties regarding the quality or habitability of the property
 - A survey plat describing the land
 - Return addressed envelopes clearly marked as a sealed bid

We have a responsibility to inform all potential buyers that as buyers they are solely responsible for verifying information on zoning, land use, flood plain, etc. The DOT is selling the land "as is" with no warranty expressed or otherwise. This notice is to be contained in all bid proposals and offers to purchase forms.

- ❖ Security Of Sealed Bids - When the DOT receives the sealed bids by mail, the bids are delivered unopened to Property Management. The bids remain unopened and secured in a designated locked place until the bid opening. We cannot provide any information concerning bids received to the public prior to the bid opening, for example, the number of bids we have received or the names of bidders.
- ❖ Opening The Bids - Bids are to be opened at the time and place designated per the sale notice. The bid openings are open to anyone who cares to attend. At a minimum, two Property Management staff shall be present. As the bids are read, all applicable information shall be put on the Bid Tabulation Form. An example has been provided in Appendix "C", Exhibit 5.

Consideration shall be given only to those bids that are received by Property Management on or before the time due and are accompanied by a bid deposit in the

form of a cashier's check, certified check money order, or personal check drawn in not less than the required amount.

- ❖ Sealed Bid Acceptance Recommendation - Following the opening of bids Property Management will determine its recommendations. Typically the Property Manager and the Chief Property Manager prepare the recommendation together.

When reasonable bids are received, we recommend that the DOT accept the highest reasonable bid (see Appendix "C", Exhibit 13). When there is a tie for the high bid, and the high bid is considered reasonable, the tie bidders shall be given 24-48 hours to leave their bid as is or raise their bid.

Determining what is a "reasonable bid" may be difficult. A reasonable bid should reflect a value somewhere within a reasonable range of the approved value. There are times when we may decide a bid is reasonable when the offer is below the approved value. For example:

- When the property has been offered multiple times without success
- When sales history of similar property or similar situations make us believe the bid is reasonable
- When we believe that the cost of re-advertising and/or marketing the property again is not likely to provide a significantly higher offer

If bids are recommended at a significantly lower value than the approved value, the sale file will provide an explanation as to why the lower offer was accepted.

There are several instances when bids should be rejected. A partial list of examples follows:

- When the bid is significantly lower than the approved value (except as earlier discussed)
- When conditions are placed on the bids by the bidder
- When the bid is not made in accordance with the bid terms in the proposal
- When the bid is not complete per the proposal terms

A Real Estate Installment Sales Contract bid shall not be considered the highest bid unless the contract bid exceeds the highest cash bid by ten percent.

- ❖ Notification To Bidders - Property Management shall promptly inform the successful bidder that their bid has been recommended for approval and promptly inform the successful bidder again when the DOT has officially accepted the bid. The notice of official acceptance shall also request deposit of the balance due, if any. The bid deposit from the successful bidder shall be retained. Unsuccessful bids and bid deposits shall be returned as soon as possible.
- ❖ Waiving Technicalities - We reserve the right to waive technicalities and accept bids when in our judgment the public is best served by accepting the bid. We reserve the

right to reject all bids and withdraw part or the entire sale. Failure to timely submit a written bid proposal with a bid deposit *is not* considered a technicality.

- ❖ Purchase Deposits - Purchase deposits are required as a condition of the acceptance of a sealed bid, a bid at an auction, and/or as a condition of acceptance of a negotiated sale. The deposit shall be in the form of a certified check, cashier's check or money order, or personal check drawn in an amount not less than 10% of the bid or negotiated purchase price of the land. The purchase deposit shall be applied to the purchase price of the land when the DOT approves the sale and accepts the bid.

The purchase deposit shall be returned to the bidder or prospective purchaser if the DOT either fails to approve the sale, fails to accept the bid or approve the negotiated purchase price. The purchase deposit will be retained by the DOT when the bidder or prospective purchaser rejects his/her bid or negotiated offer of purchase or refuses or fails to complete the transaction in accord with its terms.

➤ ***Administrative And Record Keeping***

An old saying goes, "No job is finished until the paperwork is completed". This is a true statement throughout the Property Management process, including sales of land. When we reach this stage, four steps remain to complete the process.

1. Secure necessary approvals
2. Notify bidders/buyers
3. Finish State Land Patent process
4. Ensure records are complete

In order to provide quality services for our customers, these final steps need to be accomplished as soon as reasonably possible.

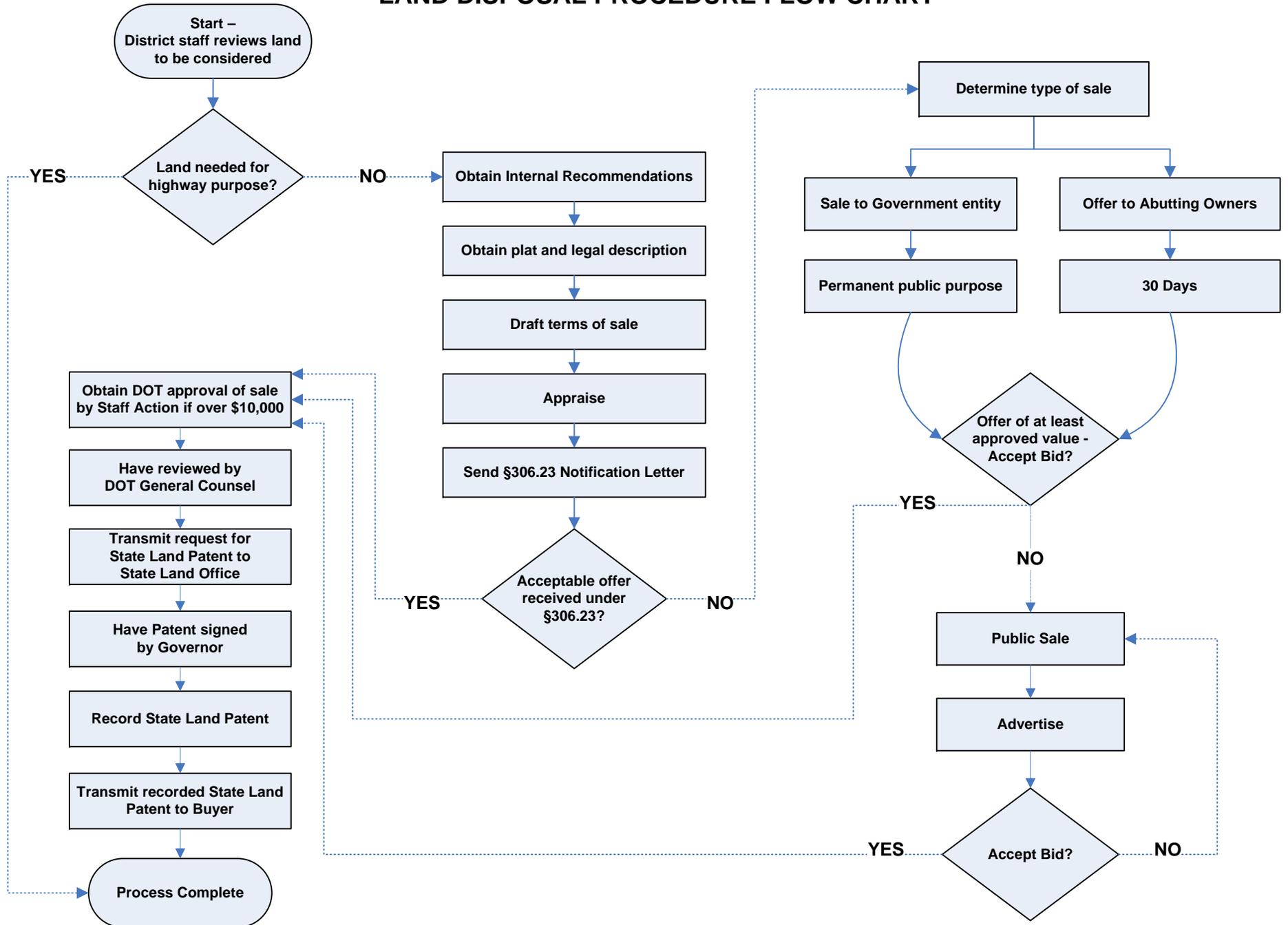
- ❖ Secure Necessary Approvals - Complete the approval process including Staff Actions if necessary.
- ❖ Notify Bidders/Buyers - After the sale is approved the successful buyer should be notified and instructed to provide all remaining payments.
- ❖ Finish The State Land Patent Process - After all monies have been received, the land patent is requested (see section of land patents in this manual).
- ❖ The Sale File - Should contain all applicable sales data and be placed in the Record Center of the Property Management Section.

OVERVIEW OF PROCESS

We have provided an overview of the land sales process for your future reference.

- ***Determine The State's Type Of Ownership*** - Make sure the State holds fee title before proceeding with a sale.
- ***Determine The Present And Future Land Needs (Internal Recommendations)*** - Obtain internal recommendations to ensure that we no longer need the land and what special conditions or terms may be required.
- ***Obtain Survey Or Adequate Legal Description For The Property*** - We need to be able to describe the land we sell.
- ***Establish Value And Terms For The Property***
 - ❖ Establish value with appraisal and review
 - ❖ Establish the necessary terms and conditions for a sale
- ***Satisfy Purchase Preference Requirements***
 - ❖ Ensure compliance with Iowa Code §306.23.
 - ❖ Consider sale to other political subdivision(s) for continued public use, if requested in writing.
 - ❖ Offer in writing direct sales to all abutting owner(s).
- ***Sale Of The Property***
 - ❖ Direct sale
 - ❖ Competitive public sale
- ***Complete Administrative And/Or Record Keeping Activities***
 - ❖ Obtain full payment
 - ❖ Secure Land Patent
 - ❖ Complete record keeping

LAND DISPOSAL PROCEDURE FLOW CHART



CHAPTER EIGHT

Other Types of Land Disposals

Revised 5/2007

MITIGATION OF DAMAGES

The following examples are considered exceptions to the Iowa Code §306.23 rules. In these limited cases, disposals occur without notice to the owners at the time of acquisition or present owners of the adjacent land from which the tract was acquired.

Excess lands may be disposed of through a process of "Mitigation of Damages." The concept of mitigation of damages is to convey public lands to a private ownership in an effort to reduce the impact or damages to remaining private property being acquired for a public use. The Attorney General's staff believes this type of direct disposal is a continuing highway use, as the mitigation of damages allows the acquisition of required right of way and, therefore, is exempted from Iowa Code §306.23 <http://www.legis.state.ia.us/lowaLaw.html>. There currently is no Case Law available that covers this issue. In order to proceed with this type of disposal, several conditions and procedures apply.

➤ ***Conditions that Must be Present in Order to Utilize the Mitigation Process:***

- ❖ Excess land has been acquired as an uneconomic remnant for a highway project.
- ❖ The State must hold title and possession of the lands to be used for mitigation purposes prior to the agreement.
- ❖ The lands to be conveyed for mitigation purposes should be adjacent to or abutting the property affected by the proposed acquisition.
- ❖ The purpose of the mitigation is to reduce the impact to the affected property and the end result must be in the best public interest.

➤ ***Procedure for Mitigation of Damages:***

- ❖ Any agreement for mitigation of damages shall occur during negotiations and shall be handled by the Acquisition Agent as part of a negotiated settlement.
- ❖ The Acquisition Agent shall notify Property Management of the lands to be considered for mitigation. The Acquisition Agent shall request Property Management to obtain approvals for disposal of the public lands.
- ❖ Property Management shall distribute the requests for approval of disposal of lands in the manner customary in disposal of lands.
- ❖ Property Management shall notify Acquisition when all approvals have been received and there has been a decision whether or not to dispose of lands.

- ❖ The State shall receive full compensation per the approved value of the mitigation transaction.
- ❖ Patent application may be made without a second Staff Action order for all direct sales in lieu of payment of acquisition costs that comply with this policy. Those patent applications, which do not comply with this policy, shall be explained by the Chief Acquisition Agent in an approved administrative settlement. The Chief Property Manager shall bring deviations from this policy to the attention of the Right of Way Director.
- ❖ The letter to the State Land Office for a Patent for land to be sold directly in lieu of payment of acquisition costs, which deviate from this policy, shall note and explain the deviation.

➤ **Written Agreement for Mitigation of Damages:**

- ❖ Upon receiving approval from Property Management, Acquisition may enter into a contract for mitigation purposes.
- ❖ The agreement will normally be a part of the acquisition contract.
- ❖ Under an arrangement with the Department of Revenue, the Iowa Department of Transportation has agreed to list the actual consideration on the conveyance document, as opposed to the conventional \$1.00 and other consideration. The Department of Revenue agreed that declaration of values would not be necessary. The acquisition contract should contain language similar to the following:

Under arrangement with the Department of Revenue, the Iowa DOT has agreed to list the actual consideration on the conveyance document, as opposed to the conventional \$1.00 and other consideration. The Department of Revenue agreed that declaration of values would not be necessary.

➤ **Preparation** - Proposed method of preparation of acquisition contracts involving mitigation of damages:

Buyer agrees to pay and SELLER AGREES to grant the right of possession, convey title and to surrender physical possession of the premises as shown on or before the dates listed below:

PAYMENT AMOUNT	AGREED	PERFORMANCE DATE
\$ _____	on right of possession	_____
\$ <u>100,000.00</u>	on conveyance of title	<u>60 days after Buyer approval</u>
\$ <u>-0-</u>	on surrender of possession	<u>Immediate</u>
\$ <u>* SEE ITEM 19</u>	on possession and conveyance	_____
	TOTAL LUMP SUM	

As part of this acquisition, Buyer agrees to convey to Seller, by State Patent and at a later date, a tract of land as described on Page _____. Said conveyance is to mitigate

damages to Seller's remaining property caused by the proposed partial acquisition from Seller's property. Said lands are to be conveyed not later than one (1) year after the completion of this property and the opening to traffic thereby.

Example of Item 19 (or whatever item number it is) of said contract:

It is understood and agreed the total consideration of this agreement is \$200,000.00. All future conveyance documents shall indicate a total lump sum of \$200,000.00. The lands to be conveyed by Buyer to Seller, as described in Item _____, are considered to mitigate \$100,000.00 of consideration. Therefore, the monetary consideration to be paid by Buyer to Seller at the time of conveyance shall be \$100,000.00.

RIGHT OF WAY AGREEMENTS WITH LOCAL PUBLIC AUTHORITIES

Project agreements can contain obligations that will require conveying land to cities and counties. Iowa Code §306.42 "Transfers of Rights of Way" <http://www.legis.state.ia.us/lowaLaw.html> requires title to right of way for local roads or streets not acquired in the name of the local authority, but rather in the name of the State, must be transferred to the local political authority who by law is responsible for its maintenance.

The Property Management and Fiscal & Title Sections share responsibility for transferring land to cities and counties for road or street purposes. Conveyances of major segments of former primary highways are the responsibility of the Fiscal & Title Section, whether or not the agreement to transfer the road is contained in a highway construction project agreement.

When the land is a single or a few parcels, Property Management shall usually handle the process. Property Management also conveys these transactions to local authorities for highway or street right of way when the need to do so arises out of normal Property Management land disposal work.

A central office record shall be kept by the Right of Way Records Center (in the Property Management Section) of all land transferred to cities and counties by Quit Claim Deed as authorized by Iowa Code §306.42. If it is necessary to obtain an original agreement with a city or county in order to transfer land under Iowa Code §306.42, the Fiscal and Title Section shall provide approval of the form of the agreement, the form of the Quit Claim Deed and the Commission Order to approve the agreement.

RIGHT OF WAY AGREEMENTS WITH OTHER STATE AGENCIES

The instrument to transfer jurisdiction over land to another state agency is an Intergovernmental Transfer of Jurisdiction and Control (see Appendix "F", Exhibit 1). This is not a transfer of title, since title remains in the name of the State. This method of disposal cannot be used to dispose of land to counties, cities, drainage districts or other governmental authorities.

All agreements shall specify the duration of the transfer. If permanent, specify permanent. If not, specify the duration for which it will be effective. The agreement will indicate the monetary consideration, if any, and terms or conditions under which money or other consideration is to be paid.

Indicate the purpose for which the lands are being transferred and state who or what authority is to maintain the facility. The agreement is to be filed for record with the County Recorder.

DISPOSALS FOR ENVIRONMENTAL OR HISTORICAL MITIGATION

General Counsel for the DOT has determined that in some cases the protection of certain environmental properties constitute "highway purposes." See Iowa Code §314.23 and 314.24 <http://www.legis.state.ia.us/IowaLaw.html>. Therefore, these properties may be conveyed directly to other governmental agencies without conflicting with Iowa Code §306.23, as long as the property continues to serve the intended public purpose. Property acquired for the mitigation of wetlands damaged or destroyed by a highway project may be transferred to another governmental entity, such as a county, provided the land continues to be used for wetland mitigation purposes. As the wetland mitigation is a highway purpose, the transfer is similar to the transfer of a roadway that is proposed to become a local road.

As the transfer is considered similar to the transfer of a roadway, the transfer is to be handled as a transfer of jurisdiction (see "Disposing of Land to other Governmental Authorities" in this manual and Iowa Code §306.42). The conveyance shall be by Quit Claim Deed and contain the following special provision:

The property described within this conveyance was acquired for highway purposes as part of highway project _____. The specific highway purpose for these premises is the mitigation of wetland and/or other required environmental impacts created as a result of this highway project. As part of the process of securing necessary permits to proceed with the highway project, the Iowa Department of Transportation was required by the United States Army Corps of Engineers (Corps) and the Iowa Department of Natural Resources (DNR) to implement mitigation procedures. A copy of the Corps 404 permit is attached. The property remains subject to the requirement of said permit.

The Grantees, their heirs, assigns and successors in interest shall maintain the property as required by the Corps' 404 permit and shall not attempt to utilize the premises described in this conveyance contrary to the terms, goals and intentions of the permit conditions issued by the United States Corps of Engineers and the Iowa Department of Natural Resources without the expressed written consent of the agencies.

Should Grantee elect to dispose of these premises in the future, Grantee acknowledges that these premises were acquired for highway purposes and therefore any future disposal shall be in accordance with the Iowa Code in regard to the disposal of highway right of way.

CHAPTER NINE

Managing Easements

Revised 5/2007

This portion of your manual will discuss the management of easements, detailing how, when and why we dispose and convey easements.

ABANDONMENT OR RELEASES OF EASEMENTS

Abandonment of permanent easements is handled through the use of a Resolution of Abandonment (see Appendix "E", Exhibit 2). Temporary easements are released through a "Release of Temporary Easement." We need to obtain the same internal recommendations to abandon an easement as we do for the sale of property.

➤ ***Recommendations to Dispose of Easements (See Appendix "C," Exhibit 8) shall be sent to:***

- ❖ District Offices
- ❖ Office of Design
- ❖ Office of Location and Environment
- ❖ Office of Facilities and Support
- ❖ Systems Planning
- ❖ Office of Traffic and Safety
- ❖ FHWA (when applicable)

The Office of Design will forward parcels to Roadside Development for review of any sites that may contain wetland, wildlife habitat, scenic vistas, quality vegetation areas or any sites that could be developed to support such uses (refer to DOT Policy and Procedures Policy No. 500.03).

Recommendations to dispose of easements shall contain enough information about the property that the person responding can make an intelligent decision. We should include a plat or graphic illustration of the land from which the property was acquired. The plat should also describe the area proposed for disposal. If available, a legal description of the land to be disposed should be furnished. The request for recommendation needs to state the type of ownership the State holds. Project and parcel numbers and the name of the owner when acquired should be included.

- ❖ A plat, plan sheet or other illustration showing the land from which the land was originally acquired.
- ❖ A plat, plan sheet, or other drawing showing the area to be disposed.
- ❖ Project and parcel numbers of the area.
- ❖ Name of the owner at the time of acquisition.
- ❖ Copy of request letter.
- ❖ Other pertinent information.

➤ ***FHWA Approval***

Advance FHWA approval is only necessary when such approval would be necessary if the easement is within the Interstate System.

➤ ***Content of Resolutions of Abandonment***

All resolutions of abandonment shall briefly state the circumstances leading to the request for abandonment. Property Management may initiate these requests at the request of an adjacent property owner, the District, Resident or Area Engineer, or as a result of land use review.

The resolution shall contain a description of the property and include a plat if it is available. When the total originally acquired area is to be abandoned, the description shall contain the original easement description. We have provided a few examples:

"All that part of the (___¼ ___¼) of Sec. __, T__N, R__W/E of the 5th P.M., _____ County, Iowa, more particularly described as...."

or

"In an easement _____ from _____ to the State of Iowa and recorded as Document No. _____ in Book _____, Page _____, in the Office of the _____ County Recorder on _____."

or

"...in a certain land contract dated the _____ day of _____, 20__, from _____ to the State of Iowa, which easement is noted and thereby incorporated by reference in a (deed) or (easement) from _____ to the State of Iowa and recorded as Document No. _____ in Book _____, Page _____, in the Office of the _____ County Recorder on _____."

or

"...in a certain land contract dated the _____ day of _____, 20__, from _____ to the State of Iowa and recorded as Document No. _____ in Book _____, Page _____, in the Office of the _____ County Recorder on _____."

When only a portion of the originally acquired property is being abandoned, the normal criteria for a legal land description shall be followed.

The Resolution shall state that, in the opinion of the DOT, the described easement is no longer necessary or required for use by the public for highway purposes and will not hereafter be required for construction or maintenance purposes for any highway of the State of Iowa.

The Resolution shall resolve, "that the present right of way herein described, together with any and all rights of the State of Iowa in and to the same, are abandoned and that the DOT, for itself and on behalf of the State of Iowa, disclaims any right, title, or interest in and to said part of present right of way or to the use for any purposes whatsoever."

The Right of Way Director signs the resolution of abandonment on behalf of the DOT. The authority and the execution of the signature shall be acknowledged and notarized.

➤ ***Notice to Utilities in Possession***

Iowa Code §327G.77 and 478.17 <http://www.legis.state.ia.us/lowaLaw.html> discuss responsibilities when abandoning easements. Utilities in possession of highway right of way under authority of maintenance permits shall be notified when the DOT intends to abandon highway easements. All available copies of maintenance permits shall be provided by the District and maintained in the abandonment file. Property Management should notify utilities 60 days prior to the abandonment so the utility can consider what effect the abandonment might have on their utility facility.

Utilities will need to acquire an easement or right to occupy the former highway right of way from the underlying fee owner, or the utility will not have the right to remain. The utility permit expires when the highway easement is abandoned. The DOT has no obligation to relocate utilities in possession of abandoned highway easement right of way. Iowa Code §327G.77(3), allows utilities on abandoned railroad right of way to remain in place subject to their purchase or condemnation of an easement from the property owner. Iowa Code §478.17, gives utilities the right to enter and repair their existing power lines, but presupposes that the utility has an easement or right to remain in the first place.

➤ ***Recording of the Abandonment***

Property Management shall send the original Resolution of Abandonment to the appropriate county recorder with a request to record and return the document. The original recorded Resolution shall be kept in the Record Center in Property Management to be filed as the permanent record.

➤ ***Abandonment Distribution***

A copy of the recorded resolution of abandonment and plat shall be sent to the following people:

- ❖ The person making the original request for the abandonment
- ❖ The applicable District
- ❖ Resident Construction Engineer
- ❖ District Maintenance Manager
- ❖ Property Management abandonment file

SCENIC EASEMENTS

Title III of Highway Beautification Act and Federal Law 23 USC 319 permit federal aid participation for landscaping and scenic enhancement projects. Iowa Code §313.67 <http://www.legis.state.ia.us/lowaLaw.html> gives the DOT authority to acquire land, rights or interest in land to preserve scenic areas along primary highways (see Appendix "E", Exhibit 3). Scenic easements have been acquired to preserve natural scenery, to preserve timber and native prairies, to protect historical locations, and to add to the enjoyment of the general traveling public.

➤ ***Monitoring Scenic Easement Areas***

Property Management is responsible for providing the Office of Maintenance with a record of scenic land holdings. Those records include a set of right of way plats, or suitable substitutes, and county location maps for all scenic projects within a specific District. The plats will have the basic and specific rights and/or restrictions acquired printed on or identified with the parcel, and accompanied by a copy of the Scenic Easement.

The Office of Maintenance and field maintenance staff are responsible to enforce the terms and conditions of scenic easements. A periodic field review of each scenic beautification area should be conducted by a representative of Property Management and of the Roadside Development Section of Design. This field review affords an opportunity to make a general inspection to evaluate the overall effectiveness of the program and to detect contract violations and encroachments.

In case of questionable interpretation of the restrictions or rights, Right of Way should be advised before legal action is undertaken to eliminate a violation.

➤ ***Amendments to Scenic Easements***

When a violation has occurred and the intent of the easement has been altered/broken, an amendment may be considered. All alternatives must be studied prior to any action. Roadside Development and Property Management must examine and inspect the site to determine what can be done to preserve what is left of the scenic easement and/or remedy the infraction. Every effort must be pursued that is physically and aesthetically possible to either correct the violation or pursue an amended easement agreement. The amendment must specifically set out that the original easement is in full force and effect except for the areas and restrictions that are addressed.

The monetary consideration may be arrived at by considering the original easement value or by obtaining an appraisal. All proceeds must be deposited into the Primary Road Fund.

➤ ***Disposal of Scenic Easements***

If the scenic easement is no longer necessary, we may dispose of the easement as long as we can demonstrate the disposal is in the best public interest or that retention of the interest is no longer necessary to carry out the purposes of the Highway Beautification Act. The person(s) requesting the disposal should provide market value for the disposal of the easement. The proceeds realized from the disposal or relinquishment, if for other than highway purposes, must be deposited into the Primary Road Fund.

FLOWAGE EASEMENTS

Flowage easements (see Appendix "E", Exhibit 4) are conveyed by the DOT under the authority of Iowa Code §306.39 and 306.40 <http://www.legis.state.ia.us/IowaLaw.html>. Flowage easements are conveyed to the United States of America. They are submitted to the Governor and the Secretary of State for signature.

➤ ***Flowage Easement Request***

Requests shall be directed to the Executive Council under explanatory cover. Documents required include an original and one copy of an Application to the Executive Council, an Order directed to the Governor, the original prepared but unsigned Flowage Easement, and one county or city map showing the location of the land for which the Flowage Easement is required.

➤ ***Preparation of Application and Order***

The Application and Order shall be prepared in a form similar to the exhibits. They must contain a complete description of the land; the subject of the request (see Appendix "E", Exhibits 6 and 7). Care should be taken to assure that the authority by which the Flowage Easement is to be conveyed is set out. Any conditions as may be prescribed by the Executive Council shall be made a part of the Flowage Easement.

The easement shall grant the perpetual right, power and privilege to use the lands being conveyed for project purposes; including the right to overflow, flood and submerge the land and facilities located thereon lying at or below a given elevation. This elevation shall be based on sea level datum.

➤ ***Cover Letter***

The cover letter (see Appendix "E", Exhibit 5) shall contain:

- ❖ Reference to all attachments.
- ❖ The name and address of the agency to whom the Flowage Easement is to be granted.
- ❖ A request to place the matter before the State Executive Council for its consideration and direction concerning to whom the Flowage Easement is to be sent.

➤ ***Easement Distribution***

After receipt of the Flowage Easement, the following process will conclude the transaction:

- ❖ The signed original Flowage Easement shall be recorded and placed on record.
- ❖ The original executed Flowage Easement shall be sent to the agency to whom the Flowage Easement is being granted.
- ❖ A copy of the executed Flowage Easement shall be sent to the appropriate County Auditor.
- ❖ A copy of the executed Flowage Easement shall be sent to the appropriate District Engineer, Resident Construction Engineer, and District Maintenance Manager.
- ❖ Property Management will retain two copies:
 - 1) One for the Record Center to be microfilmed, indexed and become a permanent part of the Right of Way Land Title Records.
 - 2) Property Management shall retain a copy in the Flowage Easement File.

➤ ***Flowage Agreements other than with Federal Government***

Sometimes cities, counties or drainage/levy districts need to occupy and/or use portions of primary highway right of way for water control projects. We may be asked to grant a perpetual right so that the other governmental entity may complete their flood control projects, channel widening, dikes or levees projects. These types of activities may require an agreement (see Appendix "E", Exhibit 1). Statutory authority for such agreements include Iowa Code §28E.3, 28E.4, 306A.7, 306.24, 468.111, and 468.220. <http://www.legis.state.ia.us/lowaLaw.html>

All flowage agreements are between the DOT, acting for the State of Iowa, and the requesting authority. They must be approved as to form by the Attorney General staff and submitted for approval by Staff Action.

The distribution of Flowage Agreements completed under authority of these Iowa Code Sections is the same as that for Flowage Easements previously described in this manual.

GRANTING EASEMENTS ON STATE LANDS

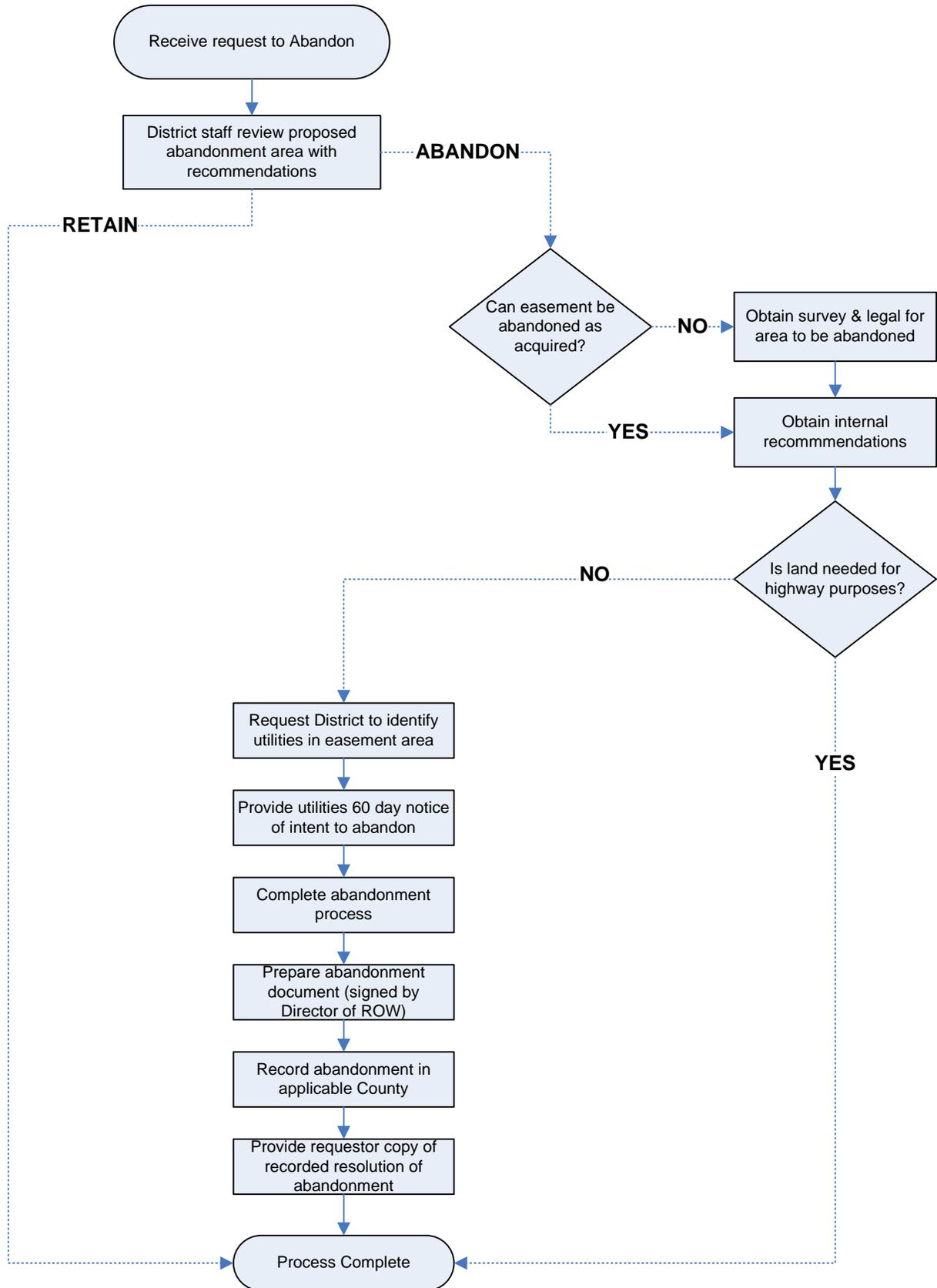
Section 306.45, Iowa Code allows the DOT to convey easements across State lands. This section allows the DOT to convey easements provided the easements "will not adversely affect the construction and maintenance of the highway system."

- Property Management shall be responsible for the processing of request for easements. Property Managers shall follow the following basic principles:
 - ❖ Easements shall not be considered involving lands necessary for the construction and maintenance of the existing highway facility (required right of way).
 - ❖ Internal recommendations shall be obtained from the same sources as any other disposal.
 - ❖ The Property Manager will order a survey plat.
 - ❖ The State shall receive fair compensation for the granting of easements.

Fair compensation for the easement rights to be conveyed is required. Fair compensation may be described as the reduction in value of the State's property as a result of the easement being granted. Staff or fee appraisers may determine a value opinion. Property Managers may also estimate fair compensation. The Chief Property Manager, or designee, will review value opinions. Other than cash considerations may be considered.

Staff Actions approving the conveying of easements is required for transactions in excess of \$10,000. The easement conveyance requires the signatures of the Governor and Secretary of State; similar to the process utilized in securing a State Patent.

PROCEDURE TO ABANDON EASEMENT



CHAPTER TEN

Land Contract Management

Revised 5/2007

The DOT is authorized by Iowa Code §306.22 <http://www.legis.state.ia.us/IowaLaw.html> to sell land through a Real Estate Land Contract. When this type of sale is used, the State retains title to the land until the contract is paid. When the buyer finishes paying for the land, a State Patent conveys title to the new owner. The following sections of your manual, cover real estate installment contracts. Presently, we offer contract sales in only limited and unique situations, such as to other governmental entities. At this time, we do not offer Real Estate Contract sales to the public; but if the market changes, we may decide to again market land by contract and these sections of our manual are in place.

HISTORY

From 1975 through 1984, the DOT entered into 156 land contract agreements, involving \$6.6 million worth of real estate. During this period, interest rates were high and land mortgages difficult to obtain. Marketing the land through the use of land contracts successfully accommodated the needs of our customers and protected the interests of the public's assets. Interest rates then improved and mortgages once again became available through the private sector. These factors eliminated the need to provide land contract sales at this time.

Land contracts can be the result of direct/negotiated sales or competitive public sales. Land contracts involve terms and conditions that may be unfamiliar to people that do not work with them regularly. A brief discussion of a few of these terms/conditions has been provided.

ADVERTISING REQUIREMENTS

The advertising requirement of Iowa Code §306.22 does not require publication of newspaper notices. Instead, when land is offered for sale on contract, all advertisements are to request both cash bids and contract offers. The preferred sale is for cash. A sale by real estate contract is simply another tool to ensure a reasonable return on the public's assets if an acceptable cash bid cannot be obtained.

Property Managers should consider the value and the type of property that is being sold when determining the kind of advertising and cost of land sale advertisements. All usable land that could be of interest to the general public should be advertised through local publications. Land that could only be used by one or two neighbors may be advertised through a simple letter to those neighbors. Specialized equipment or machinery may warrant advertising through specialized trade journals as well as newspapers. When the land being sold is surrounded by a single property owner, landlocked, and with limited value, advertising and negotiations may be limited to that one property owner.

TERMS AND CONDITIONS

Iowa Code §306.22 <http://www.legis.state.ia.us/IowaLaw.html> limits the available terms and conditions for the sale of property on contract. The term of the contract shall not exceed ten

years, but may be less. A shorter-term contract should be considered when similar property is being sold on a shorter term in the market. Our experience with commercial property has been that commercial property contracts are often paid off in less than ten years. If commercial property has a cash income, consider a term shorter than ten years. If the property is purchased on speculation with no interim income stream, a ten-year term may be necessary in order to reduce the cost of holding the property to a point necessary to attract a reasonable sale price.

Interest rates shall be set at prevailing market rates. When determining market rates, consider contracts with a similar down payment and terms to our sale. Down payment requirements may be less than ten percent, but no lower than five percent of the purchase price. Down payments may be increased to more than ten percent of the purchase price when larger down payments are being required for similar property being sold on the open market in the area with similar interest rates and terms. Down payments in excess of ten percent may be required to discourage the buyer from abandoning the contract, to protect against reductions in the resale value of the property by the construction of specialized improvements, or when necessary to protect the interests of the State.

PROPERTIES WE DO NOT OFFER FOR SALE BY LAND CONTRACTS

It is our general policy not to offer small, irregular, damaged or marginally valuable property for sale on contract. As a rule of thumb, property in this category usually ranges in a value less than \$10,000. If the land has a size and value similar to land being sold on contract in the local area, we may offer the land for sale by cash or contract.

RESALE

Sometimes we must re-claim land when contracts are forfeited. If we believe we can sell the property for the full payment of the unpaid balance due on the original forfeited land contract, only cash bids should be accepted. Land being resold after the forfeiture of a land contract may be offered for resale for cash or on contract if a contract offering is necessary to attract a reasonable sale price. When similar land is not being bought for cash in the local market, the land may be resold by offering it for sale by cash or contract.

ASSIGNMENTS

An assignment is simply when the purchaser would like to transfer their interests to another buyer. DOT land sale contracts require the buyer to furnish us in writing a request to assign the contract to another buyer. We prefer not to allow assignments of contracts except in unusual and unique situations. In those unique situations, the buyer must provide us with a copy of all recorded buyer's assignments or transfers of any interest in the contract to any third party. This information is needed both to manage the land and also to make application for a State Patent upon completion of the contract. However, we shall not relieve or release the original buyer from any obligation under our contract. All land management correspondence shall be sent to all persons with any interest in the land.

INTEREST SUBORDINATION REQUESTS

An interest subordination request is asking for the State to relinquish the first claim on the property and allow another party to become the first paid in case of default. Usually this kind of a request happens when the buyer would like to develop the property or to remodel improvements and the buyer is attempting to borrow money from a lender for these efforts. The DOT shall not subordinate the State's security to any third party, but Property Managers may explore and consider other options to accommodate the buyer's needs.

For example, it may be possible to subdivide the parcel being acquired and to issue a Patent for that portion needed for development in advance of final payment for the whole parcel. Before agreeing to a request to convey by two Patents, the proposed remaining parcel should be appraised to ensure there is sufficient value to protect the State's interest. The remaining tract must also have its own access in case of default. If the value of the land remaining is adequate security for the remainder of the debt on the original contract, we may modify the contract to allow the issuance of two Patents. Approval to do so shall be obtained by Staff Action. The buyer's only other alternative is to pay the original contract off.

PAYMENT ACCOMMODATION REQUESTS

Sometimes the buyer may develop financial problems and changing or restructuring the payments may allow the buyer to continue paying for the property. We should attempt to accommodate reasonable requests to change remaining pay dates to accommodate the buyer as long as the public's interests are protected. Property Management will furnish revised payment schedules necessary to reflect changes in remaining pay dates.

Interest only payments may be accepted, when necessary, with the understanding that the buyer shall be current at the end of the year. Late payment agreements shall require an additional interest payment on the late principal payment. When our contract does not authorize us to collect a delinquency or deferral charge for a late payment after notice of default, the late payment charge must be negotiated. In the absence of an agreement, no delinquency or deferral charge may be collected and our remedy may be limited to forfeiture. The recommended negotiated charge for delinquency payments is five percent annual interest. Contracts may be forfeited for failure to make accommodation payments when and in the amounts due only if the original contract authorizes us to do so. Iowa Code §537.2502 and 537.2503 <http://www.legis.state.ia.us/IowaLaw.html> govern delinquency and deferral charges. The maximum allowable charge by the terms of the contract is one percent per month.

No accommodation agreement shall be made unless the buyer furnishes written proof of payment of real property taxes and, when appropriate, proof of fire and liability coverage for the property. Accommodation payments may be required to be paid monthly by certified check, bank money order, or other guaranteed form of payment and not by personal check. Financial statements shall be made on bank or other institutional lender forms. The buyer shall investigate and report the terms, conditions and availability of all alternate sources of funds to pay us off or to refinance his operation. The information shall demonstrate buyer's need for a payment accommodation and that the accommodation, if made, will help their situation.

It may be necessary to consider a request from a buyer for an extension of time to a balloon payment. When a request is made, we shall obtain a complete financial statement and determine the risks and our buyer's needs.

The property should be appraised, if necessary, to determine the difference between the remaining debt and the cash value of the property. The appraiser shall also be requested to report on the terms and interest rates being charged on similar property being sold on the open market in the local area.

Other accommodations may be considered and warranted. The following is a brief list of examples:

- ❖ An accommodation may be made to assure payment of as much of the original agreed contract principal as possible.
- ❖ An accommodation may be made to avoid or reduce losses that may be anticipated if property is forfeited and resold, including additional foreclosure and marketing costs and expenses.
- ❖ An accommodation may be made to avoid loss of income and possession of the property, which would be caused in the event our buyer exercises his right to file bankruptcy or to exercise rights under foreclosure moratorium, mandatory mediation, or similar law.

The interest rate charged for a balloon payment accommodation shall not be less than that being charged for a similar accommodation on the open market. The term for the extension shall not be longer than is reasonably necessary to allow the buyer to either pay the property off or to refinance the property. The interest and principal payment amount shall not be less than the property's fair market cash rental. Payments may be rescheduled when necessary to accomplish the purposes of this policy, but not beyond twelve months from the day the last payment is due on the contract without approval by DOT Staff Action.

Property Management shall provide assistance to the Attorney General Staff if necessary, to avoid threatened or probable litigation that may arise out of the administration of land contracts. Property Management or the Attorney General's Staff, to avoid litigation, may propose settlements. When a disagreement exists, the Highway Division Director will be consulted.

INSURANCE REQUIREMENTS

Persons who buy improved excess land through land sales contract shall maintain fire insurance. Contract buyers shall be required to maintain proof of fire insurance and failure to do so shall be cause for forfeiture of the contract. Property Management shall notify the insurance company, and the State of Iowa shall be named as joint beneficiary of the policy. All insurance proceeds shall be made payable to the contract buyer and the DOT. Property Management may agree to deposit insurance payment checks in escrow with a local financial institution. Escrow agreements shall forbid disbursement without written authorization from Property Management to do so. Property Managers may endorse fire loss insurance checks

and thereby release funds only for damage, which has been repaired. This determination shall be made only after a personal inspection of the property.

PAYMENT OF REAL ESTATE TAXES

The buyer is obligated to pay real property taxes on property purchased from the DOT on contract by Iowa Code §306.22(7). Property Management shall annually obtain and place proof that real estate taxes have been paid in the land contract sale file.

When taxes are not paid, the property can be sold by a tax sale. A Treasurer's Deed is ultimately issued conveying the property to whoever has paid the taxes, penalties, filing and certificate costs.

As the fee owner, the DOT is notified that land we sold on contract will be sold by taxing authorities for nonpayment of real estate taxes. In most cases, we will receive this notice of tax sale 30 days prior to the tax sale. If not promptly paid by our buyer, the DOT may pay the taxes, penalties and costs necessary to redeem the land so the property can then be resold free of all encumbrances. We can forfeit the contract and sue, or request the Attorney General to sue, to collect all tax payments and redemption costs.

TAX LIENS AGAINST THE STATE

Iowa Code §626.109, provides that a judgement against a department, agency, division, or official of the state or a county, city, school district, or other political subdivision of the state does not create a lien against public property held by the state, county, city, school district, or political subdivision of the state and makes it retroactively applicable.

If necessary, Property Management, in accordance with Iowa Code §427.2 <http://www.legis.state.ia.us/lowaLaw.html>, can make payments for real estate taxes on forfeited contracts. Such payments shall be approved by Staff Action. Local taxing authorities shall be requested to abate taxes that become payable after the land is once again owned by the State in fee, free of the forfeited contract. No real estate tax is payable while the State owns the land. After we resell the property, our new buyer may be responsible to pay at least part of the taxes which were assessed when the State owned the property, but which were not due when the DOT forfeited its contract. These taxes are to be prorated on the month that the State surrenders possession of the property if sold on contract, or after the Patent is issued if sold for cash. Prospective buyers of land being resold after forfeiture shall be informed that real estate taxes will be prorated as required by Iowa Code §427.2. This understanding shall be confirmed with local taxing authorities to avoid misunderstandings after the property is resold.

RE-CONVEYANCE IN LIEU OF FORFEITURE

By policy, land contract buyers are not requested to sign personal notes as additional security for the payment of their contract obligations. The land is the sole collateral for the contract and the State retains legal title to the property to assure that the buyer's debt is paid. The DOT hopefully receives the market value selling the property to the highest reasonable bidder at a public sale. There are times when land sells higher than the appraised value. Landlocked

property may sell to an abutting property owner for an amount higher than what would be paid for the property by a third party without direct access. Land values may decline below what the buyer has agreed to pay the DOT for the property.

Property Management shall work with our contract buyers who notify us that they intend to abandon their contract. Consideration shall be given to granting the buyer an opportunity to re-convey the property by Warranty Deed in lieu of forfeiture when there are no unreleased liens or encumbrances against their interest in the property.

This may provide an opportunity to collect an additional annual payment, a reasonable cash rental, to obtain the payment of unpaid taxes. This procedure can also be used as a means to negotiate and obtain access to otherwise landlocked property improving resale value.

Re-conveyances shall be made on the basis of an abstractor's Report of Record Ownership and Liens or its re-certification not older than seven days prior to the date the re-conveyance is received and accepted. Title to re-conveyed property shall be accepted by Staff Action, and the deed and all release forms, if any, shall be recorded.

FORFEITURE OF REAL ESTATE INSTALLMENT SALE CONTRACTS

Property Management, through a notice of forfeiture, shall initiate forfeiture of real estate contracts. Notices of forfeiture (see Appendix "F", Exhibits 2 and 3) should contain basic criteria.

- ❖ Prepared on Iowa State Bar Association form.
- ❖ Identify the contract, accurately describe the property covered, and attach a copy of the contract to the notice.
- ❖ Specify the terms and conditions of said contract, which have not been complied with.
- ❖ Notify our buyer that the contract will stand forfeited and canceled unless they, within 30 days after the completed service of said notice, cure the default and thereby comply with the terms and conditions of the contract and also pays the costs of serving notice.
- ❖ Terms prepared on the basis of an abstractor's Report of Record Ownership and Liens or its re-certification not less current than seven days prior to the date notices are sent to the sheriff for service.
- ❖ Notices served by the sheriff or other local law enforcement agency shall complete the Return of Service and return the proof of service to Property Management. If our buyer or any other interest holder signs an acceptance of service on the Notice of Forfeiture, it is not necessary to also have the notice served by the sheriff. Serve all persons shown on the Report of Record Ownership and Liens who have any ownership or interest in our buyer's equitable ownership. Serve all of our buyer's assignees and all tenants. Serve all of our buyer's lenders and lien holders of record as well as the taxing authority. If the property is improved, do an ICC Lien Search as well, and serve all security interest holders with secured property on the land. Thirty days after the notice has been

served, Property Management shall prepare the Affidavit in Support of Forfeiture of Real Estate Contract Tax Sales.

- ❖ Record Documents - Property Management shall record all notices, acceptances of service, completed returns of service and the affidavit of forfeiture; and shall pay all service and recording costs.

LAND CONTRACT SALES TO OTHER PUBLIC AGENCIES

In specific situations, the DOT will provide land contract sales to other governmental entities. Examples include improved and unimproved properties sold to cities, counties, school districts and other state agencies.

➤ Terms and Conditions

Government land contract sales are only offered when the property is to be used for public purposes. If the land use changes from a public use the entire balance should become due and payable. Government land contracts are only offered when the sale price is at least the amount of the approved value. Government land sale contracts are generally offered to other governmental entities for zero interest.

Generally the terms of the land contract shall be four payments spread over three years. 25% of the purchase price shall be due when the land contract is submitted for DOT approval. 25% of the purchase price shall then be due annually until the balance is paid in full.

➤ Resale or Assignments

The contract shall not allow the property to be resold or the buyer's interest assigned until the balance is paid in full.

➤ Improving the Property

The contract shall require written permission from the DOT prior to any improvements being made to the property until the balance is paid in full.

➤ Insurance Requirements

The contract shall indemnify the DOT from all claims and causes of action arising from the buyer's use of the property. The buyer shall be required to maintain insurance, unless they are a self insured agency.

➤ Conveying the Property

Upon receiving the entire purchase price we will request and process the application for a State Land Patent as in the case of any other sale of land.

➤ Exceptions and Unusual Situations

Occasionally unusual circumstances may create the need for broadening or expanding the terms listed in this section. Those instances will be considered on a case by case basis with recommendations made to the Director of the Office of Right of Way.

CHAPTER ELEVEN

Administrative and / or

Record Keeping Activities

Revised 5/2007

This section of your manual will attempt to "wrap things up" and discuss how we finish the disposal process. This area will discuss the following items:

1. *Attorney General Review*
2. *Preparing the State Patent*
3. *Release of Patent Reservations and Restrictions*
4. *Correction of State Patents*
5. *Transfers of Jurisdiction Quit Claim Deeds*
6. *Transfers of Jurisdiction Intra-Departmental Land Transfers*
7. *Land Use Review Schedule*
8. *Income Vouchers and Long-Term Receivables*
9. *Property Maintenance and Expense Vouchers*
10. *Permanent Records Required*
11. *Statistical Reports*

ATTORNEY GENERAL REVIEW

Often we need paperwork and files reviewed by the Attorney General's staff to ensure compliance with the applicable requirements of law. The purpose of these types of reviews is to assure the DOT and the Secretary of State (State Land Office) that:

- The State actually owns the land, or interest in land, we propose to sell.
- The form of conveyance is adequate to convey the land or proposed interest.
- The disposal procedures we used comply with the land disposal requirements of the law as implemented by DOT policy. (Please note the meaning and application of the requirements of the law as implemented by DOT policy are the processes set forth in this manual.)

Attorney general review is required under the situations provided below:

- All requests for State Patents.
- All requests for easements conveyed on State lands.
- All requests for quit claim deeds as part of a transfer of jurisdiction.
- When non-standard or unusual circumstances that may effect the legality or validity of the disposal/transaction not authorized by these requirements occurs.

PREPARING THE STATE PATENT

Iowa Code §9G.6 <http://www.legis.state.ia.us/lowaLaw.html> discusses the patent process and we prepare patent requests in conformance with the requirements of that chapter. We cannot

issue patents to a deceased person or to the estate of a deceased person. The Grantee must be a named person. Title can be issued to John Doe "in trust" or "as executor for the estate of...."

➤ ***Items to be Included in the Request***

Requests are sent to the Secretary of State with an explanatory cover letter. Required documentation to be sent with the explanatory letter includes an original Certificate of Payment and Request for Patent, the original prepared but unsigned State Patent, and a copy of the original acquisition documents.

➤ ***Explanatory Cover Letter***

The letter shall contain (see Appendix "F", Exhibit 4):

- ❖ Reference to all attachments.
- ❖ A statement that the land is no longer needed for highway purposes.
- ❖ The name and address of the person to whom the Patent is to be granted.
- ❖ The appraised value and the amount paid for the land being sold.

➤ ***Certificate of Payment and Request for Patent***

The Certificate should include (see Appendix "F", Exhibit 5):

- ❖ A complete description of the land.
- ❖ All terms, conditions, prohibitions, or restrictions on the use of the land.
- ❖ A description the same as the description on the Patent. A Patent cannot be issued when any discrepancy or inconsistency exists between the two descriptions.
- ❖ The appraised value per acre.
- ❖ Name of person to whom sold. Date of sale.
- ❖ Price per acre, (amount paid).
- ❖ Name of person making final payment.
- ❖ Certification that the grantee has paid the full purchase price and that the purchase price is considered an equitable amount for the land.

When the buyer is not the same person who made the final payment or who is entitled to receive the Patent, the names and addresses of the buyer, the person who made the final payment, and the person who is entitled to receive the Patent must be shown. The person entitled to receive the Patent by assignment from the buyer shall furnish the assignment to Property Management. The assignment shall be indicated on the Certificate of Payment and Request for Patent. An original Certificate of Assignment must be attached and shall be filed and preserved in the State Land Office.

Iowa Code §306.22 <http://www.legis.state.ia.us/lowaLaw.html> requires that all Patents be subject to the rights of utilities in possession. Utilities in possession of right of way in use at the time of the sale have a right under law to remain.

➤ ***Required Original Acquisition Documents***

We need to furnish a copy of the original deed(s) when any part of the land was acquired by deed. If any part of the land was acquired by condemnation; a copy of the condemnation notice(s) and, if available, the report of the compensation commissioners should be furnished. The commissioners' report shall contain the signature of the commissioners. When the condemnation was appealed, state when and how the appeal was finally settled.

➤ **Conveyance of Wetlands**

Should environmentally protected lands be disposed (other than a transfer of jurisdiction to another governmental entity) the following language shall be incorporated into the State Land Patent:

The property described within this conveyance was acquired for highway purposes as part of highway project _____. The specific highway purpose for these premises is the mitigation of wetland and/or other required environmental impacts created as a result of this highway project. As part of the process of securing necessary permits to proceed with the highway project, the Iowa Department of Transportation was required by the United States Army Corps of Engineers (Corps) and the Iowa Department of Natural Resources (DNR) to implement mitigation procedures. A copy of the Corps' 404 permit is attached. The property remains subject to the requirement of said permit.

The Grantees, their heirs, assigns and successors in interest shall maintain the property as required by the Corps' 404 permit and shall not attempt to utilize the premises described in this conveyance contrary to the terms, goals and intentions of the permit conditions issued by the United States Corps of Engineers and the Iowa Department of Natural Resources without the expressed written consent of the agencies.

Should Grantee elect to dispose of these premises in the future, Grantee acknowledges that these premises were acquired for highway purposes and therefore any future disposal shall be in accordance with the Iowa Code in regard to the disposal of highway right of way.

➤ **Patent Distribution**

When we receive the signed Patent from the Secretary of State, the Patent shall be processed as follows:

- ❖ The signed original State Patent shall be recorded, placed on record, and sent to the new owner.
- ❖ A copy of the transmittal letter is sent to the Secretary of State.
- ❖ A copy of the recorded Patent shall be sent to the District and the Resident Construction Engineer.
- ❖ A copy shall be sent to be filed as the permanent Right of Way record in the office's permanent title record system.

- ❖ A copy of the plat shall be sent to the Appraisal Section with a note of the name and address of the purchaser, the amount paid for the land, the Patent number, the date of the Patent, and the State Land Office volume and page number.
- ❖ One copy shall be retained in the Property Management land sale file.

RELEASE OF PATENT RESERVATIONS AND RESTRICTIONS

We may be asked to consider requests by property owners to release restrictions placed on patents issued in the past. The control of junkyards and outdoor advertising along primary highways is provided for in Chapters 306B and 306C, Iowa Code <http://www.legis.state.ia.us/IowaLaw.html> (see Appendix "F", Exhibits 6 and 7).

There is no public purpose served by maintaining a land-use restriction, stricter than that required by the Iowa Code. It was never our intention in establishing restrictions to circumvent the zoning powers of local authorities. Requests to remove junkyard or outdoor advertising control restrictions for patents shall be honored. These rights can be released at no charge to the property owner.

Requests to remove mineral rights restrictions shall be reviewed by field and design personnel in the same way that any land disposal recommendation would be reviewed. If the mineral reservation is no longer necessary to protect the highway, it may be released.

If the State has reserved a mineral right, it will be necessary to patent the mineral fee. Mineral rights may be appraised should this right have considerable value. The present owner of the surface rights shall be given the opportunity to acquire the mineral right through a direct purchase for its appraised market value.

Requests to release access restrictions or reservations shall be reviewed as if they were a request for an original sale of the property. When release of access rights will materially enhance the value of previously patented land, the land shall be appraised both with and without access rights to determine how much the land will be enhanced in value by their release. The present owner of the originally patented land will be given an opportunity to acquire the access rights by direct sale for their appraised fair market value.

Reservation releases for junkyards and outdoor advertising do not require approval by Staff Action. All other reservation releases in this chapter will require Staff Action approval. Requests for the release of patent restrictions shall be presented to the Secretary of State in a manner similar to the making of an application for the original patent. The release shall also be recorded in the same manner as the original patent and attached thereto. The cover letter to the Secretary of State shall explain the need for the release. The final document signed by the Governor and Secretary of State is on a Release Restrictive Covenants Form (see Appendix "F", Exhibit 7).

CORRECTION OF STATE PATENTS

Clerical errors may be corrected by the Secretary of State in the name of the Grantee as authorized by Iowa Code §9G.7 <http://www.legis.state.ia.us/IowaLaw.html>. The form for patent

corrections depends upon the nature of the corrections. Use prior corrections as drafting guides.

Patent corrections are authorized by Iowa Code §9G.7. There are two established formats for correcting State Land Patents. The preferred alternative is by a Corrective Patent. The State Land Office will only accept the original Patent for this alternative. The Land Office will not accept a recorded copy. The Corrective Patent is completed and submitted with the original Patent to the State Land Office for processing and signatures. We will then record the Corrective Patent.

The second alternative is the use of a Correction Certificate. We prepare a certificate showing the error and give the reasons for the correction. In case of a major discrepancy in the legal description, consult the Attorney General's office. The Secretary of State is authorized and required to sign the certificate and make the necessary corrections in the tract and plat books of that office. The certificate is recorded and shall have the effect of the originally correct deed.

Iowa Code §354.24 is concerned with errors to plats. Should there be a surveyor's error in the plat, the original surveyor, or two surveyors confirming the error through independent surveys, shall record an Affidavit of Plat Correction confirming that the error or omission was made (see Appendix "F", Exhibit 8).

OTHER CORRECTIONS

When property is erroneously conveyed by an owner in a deed, donation, or sale to the State, the error may be corrected as authorized by Iowa Code §9G.10. The procedure for accomplishing the correction is an exchange deed. The Governor quit claims land erroneously conveyed to the State in exchange for a deed from the property owner for the land originally intended to be conveyed to the State.

TRANSFERS OF JURISDICTION QUIT CLAIM DEEDS

Quit Claim Deeds to transfer highway right of way to the authority responsible for its maintenance are prepared both by Property Management and by Closing Agents in the Fiscal & Title Section.

The Fiscal & Title Section is responsible for conveying State owned right of way to local authorities when such a transfer is required by the terms of a construction project agreement. In this context, the required deed to the city is considered another parcel to close on the project.

The Office of Local Systems also negotiates transfers of jurisdiction with local authorities to transfer State owned routes and stub roads. These agreements are submitted as a special item to the Commission. District personnel certify that work required by a transfer agreement has been completed and that any payment required has been made. This Quit Claim Deed is prepared by the Closing Agent on a time available basis.

In general, Property Management is responsible for preparing Quit Claim Deeds for transfers of jurisdiction when local authorities request the Department of Transportation to transfer title to what already is or planned to be part of a local street or road.

Several procedural Commission Orders set out Transfer of Jurisdiction agreement approval and Quit Claim Deed execution responsibilities. These Commission Orders are:

➤ Commission Order H-81-169, Dated September 16, 1980

Authorizes the DOT Director to execute Quit Claim Deeds in accordance with approved Transfer of Jurisdiction agreements without further Commission or Staff Action.

➤ Commission Order H-84-45, Dated July 19, 1983

Authorizes the DOT Director to execute Quit Claim Deeds in accordance with ratified and affirmed Transfer of Jurisdiction agreements and orders transferring roads or parts of roads to local highway authorities executed or ordered prior to July 1, 1980, without further Commission or Staff Action.

When there is no prior agreement, the Commission will be requested to approve agreements to authorize the DOT Director to execute Quit Claim Deeds in accordance with requests by local authorities to transfer title to local streets or roads. The Director shall execute a Quit Claim Deed when title to unused or excess right of way is needed for local road or street purposes, or a road or street is being maintained by the local jurisdiction as a local road or street. No further Commission action is required to document the Director's acceptance of the agreements.

The form for Quit Claim Deeds has been standardized with the assistance of General Counsel. Two sample Quit Claim Deeds may be found in Appendix "F", Exhibits 9 and 10. The Quit Claim Deeds shall be reviewed and approved as to form in advance of the Staff Action. This review shall be made before the final preparation of the Staff Action by the Chief Property Manager and by the Attorney General staff. The executed Quit Claim Deed shall be recorded in the county in which the land is located. Property Management shall provide a copy of each recorded Transfer of Jurisdiction Quit Claim Deed to the Fiscal and Title Section. Fiscal and Title will maintain an office record of transactions completed, and include the deed in the Permanent Title Records System.

TRANSFERS OF JURISDICTION INTRA-DEPARTMENTAL LAND TRANSFERS

In any case, when another office or department has either a temporary or permanent need for the use of excess land or improvements or personal property in advance of construction, Property Management may transfer the use of it to the requesting office, provided the requirements of Iowa Code §306.23 <http://www.legis.state.ia.us/lowaLaw.html> are fulfilled prior to the transfer. Intra-departmental transfers shall describe the land or property transferred,

specify the purposes for which the transfer was made, and the duration for which it is effective. The DOT shall approve all permanent intra-departmental transfers of excess land.

LAND USE REVIEW SCHEDULE

When lead-time and workload permits, Property Management shall conduct a land use review schedule with the District staff. The purpose of this schedule shall be to assure an orderly and timely review of the use of all excess land on current projects.

When possible, the review of all excess land on large complex rural/urban and/or federally aided right of way projects shall be completed within the first six-month period after the opening of the project to traffic. This schedule shall make allowance for those reviews necessary to promptly respond to inquiries from the public to purchase land.

When land is being held pending a possible future need, Property Management shall schedule a future land use review.

INCOME VOUCHERS AND LONG-TERM RECEIVABLES

The Payment and Audit Unit of the Property Management Section uses income and expense data to maintain financial accounts for the Property Management programs. Income vouchers are prepared using forms found in Appendix "C", Exhibits 1,2 and 3. The Office of Finance will audit, post, credit, or adjust the appropriate federal aid account to reflect the income.

Long-term Receivables (LTR) will be prepared for rental income purposes. The LTRs are transmitted through the Office of Finance to make a cost account audit assuring proper credit will be given to the appropriate project. Property Management prepares and requests invoices from these LTRs for rental income on a monthly basis, and requests delinquent invoices based on the monthly rental invoices. Next, all rental income is posted to the Lease Accounting Reconciliation Ledger and the Lease Accounting System database is brought up-to-date.

Property Management shall forward all checks or monies not originally sent to the Office of Finance. Property Management shall prepare documentation and support data for miscellaneous income vouchers, including proceeds from bid deposits, performance and removal bonds, and sales tax. Income received from sales of miscellaneous items, buildings and property, the value of which is included in the excess land inventory, shall be vouchered. Proceeds of these sales shall be identified by project and parcel numbers. The Office of Finance will issue a receipt for all sale proceeds. The receipt shall be referenced on the income voucher or bill of sale. Copies of income vouchers and bills of sale shall be kept in the appropriate sale file.

PROPERTY MAINTENANCE AND EXPENSE VOUCHERS

Expenses shall be processed through an Order Claim when appropriate and paid through the Order Claim or a Universal Payment Voucher. Expenses may include maintenance costs, surveillance costs, publication, advertising, report of lien cost and other normal and necessary property management expenses.

All such vouchers and accompanying payment support data will be audited for cost accounting purposes by the Payment and Audit Unit of Property Management and for reimbursement purposes by the Office of Finance. Copies of all Order Claims and Universal Payment Vouchers shall be kept in the appropriate sale or lease file.

Vouchers for payment will be reviewed and approved prior to payment being requested. The vouchers will be signed by the Chief Property Manager of the Property Management Production Coordinator. All requests for payment will include the minimal information with the request.

- County, Project and Parcel number
- Clear description of what bill is for
- Dates services provided
- Rates and basis used for determining bill
- Amount of bill

If required, a Staff Action will be obtained prior to processing for payment. All contracts for services over \$50,000 shall be competitively bid according to DOT policy and procedures.

PERMANENT RECORDS REQUIRED

We maintain a permanent file for each parcel of land being managed. We also keep a permanent copy of all land sold and land or rights in land released, abandoned or disposed. A second copy of all title instruments shall be sent to the Property Management File Room Coordinator to be microfilmed and indexed in the office's Land Title Record System.

Property Management shall also maintain a permanent record of all Commission Orders and Staff Action approvals for ten years. All Property Management parcel files shall be retained in accordance with DOT policy.

STATISTICAL REPORTS

We provide reports, information, or statistical data as requested. We receive requests from several areas within the DOT, FHWA other governmental entities and the private sector.

Each month we report work accomplished for that period. We report sales by item, parcel, area, appraised value and actual sale amount. This report includes whether offers were accepted or rejected. A monthly lease summary describes all types of leases in effect during the given month and identifies required or non-required right of way on both interstate and primary systems.

At the end of each fiscal year, we generate a report detailing income received and categorized as land sale payments, non-required right of way rent, required right of way rent, and sales of buildings, fixtures and other miscellaneous items.

We maintain an excess land inventory with a separate balance for parcels on interstate and primary systems described as committed land and uncommitted land.