

Chapter Four **Tenant Occupied Residences**

State and federal requirements provide significant benefits for tenants displaced from their homes as a result of a public project.

Types of Tenant Occupants

The term “dwelling” may be defined as the place of permanent or customary and usual residence of a person, according to local custom or law, including a single-family house; a single family unit in a two-family, multi-family or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home or any other residential unit.

There are four general categories of residential tenants:

- Tenant Occupants of 90 days or more.
- Tenant Occupants of less than 90 days.
- A tenant, who occupied the property after the Initiation of Negotiations and before it was acquired by the Iowa DOT, are also referred to as Subsequent Tenants.
- Persons who did not occupy the property until after it was acquired by the Iowa DOT. These occupants are not considered displaced under the definition of Displaced Persons.

Tenant Occupants of 90 Days or More

A person is considered to be in this category and may be eligible for a rental supplement, if the person has actually rented and occupied the displacement dwelling for more than 90 days prior to the initiation of negotiations for its purchase by the Iowa DOT and either rents or purchases and occupies a DSS replacement dwelling within one year after the date they move from the displacement dwelling.

Tenant Occupants of Less Than 90 Days and/or Subsequent Tenants

A person is considered to be in this category if the person has actually rented and occupied or owned and occupied the displacement dwelling for less than 90 days prior to, or after, the initiation of negotiations for its purchase by the Iowa DOT.

All Replacement Housing Payments to displacee’s in this category will be paid under Housing of Last Resort provisions. (See Housing of Last Resort Chapter)

For this category the procedures and requirements are the same as for tenants of more than 90 days, except if there is comparable, DSS replacement housing available within the

displacee's financial means the displacee is not eligible for a rental supplemental payment.

A comparison of a tenant occupant of 90 days or more and a tenant occupant of less than 90 days has been provided.

- If comparable, DSS replacement housing is available within the displacee's financial means, the displacee is not eligible for a rental supplemental payment.
- If the tenant of less than 90 days refuses to provide evidence of their total income or is a dependent, they are assumed to have met the financial means test and are not eligible for a rent supplemental payment.
- The tenant will still be eligible for reimbursement of their moving costs because there is no length of occupancy requirements for moving costs.
- Displaced Tenant occupants of 90 days or more are eligible for down payment assistance. See discussion in this Chapter for requirements.

After Acquisition Occupants

Iowa Code 306.38 authorizes the Iowa DOT to rent properties after the acquisition by the State and before it is needed for the public project. These occupants are not considered to be Displaced Persons. Per 761 IAC 111.2(9)(c)(ii).

Replacement Housing

While displacee's are entitled to rent or purchase the replacement housing of their choice, state and federal requirements provide minimum standards be in place before public funds may be used for participation in the costs.

Decent, Safe and Sanitary (DSS)

The definition for DSS is found in 49 CFR Part 24.2 (8) "The term decent, safe, and sanitary dwelling means a dwelling which meets local housing and occupancy codes." However, any of the following standards which are not met by the local code shall apply, unless waived for good cause.

- WATER -The dwelling must have an adequate supply of potable (drinking) water.
- KITCHEN - In the case of a housekeeping unit, there shall be a kitchen area containing a fully usable sink properly connected to potable hot and cold water and to a sewage drainage system. There must also be adequate space and utility connections for a stove and refrigerator.
- HEATING SYSTEM – The dwelling must contain a heating system capable of sustaining a healthful temperature of approximately 70 degrees. If the furnace was not inspected or installed within past 12 months, a furnace inspection by a qualified person

is required.

- BATHROOM - The property must have a separate, well-lighted and ventilated bathroom affording privacy to the user, containing a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and a sewage system.
- ELECTRICAL SYSTEM - The dwelling's electrical system must have an adequate and safe electrical wiring system for lighting and other electrical services.
- STRUCTURALLY SOUND - The replacement dwelling must be structurally sound, weather-tight and in good repair. Examples: no broken windows; chipped or peeling paint; no major foundation problems; weather proof roof; functional gutters; drainage away from the foundation, etc.
- EGRESS - The dwelling must have a safe, unobstructed means of egress to safe, open space at ground level.
- ADEQUATE IN SIZE - Replacement Housing must be adequate in size with respect to the number of rooms, bedrooms and living space needed to accommodate the displacee. The number of persons occupying each room used for sleeping shall not exceed the number permitted by local housings codes, or in the absence of local codes, each sleeping room should contain at least 72 square feet of floor space for the first occupant and at least 68 square feet for each additional occupant. Generally children of different sex should not be required to share bedrooms. Unique situations may be considered on a case by case basis considering the age and sex of adults and children sharing the unit, cultural customs and the appropriateness of sharing bedroom space.
- ACCESSIBLE - For a displacee who is disabled, the dwelling must be free of any barriers which would preclude reasonable ingress, egress or use of the dwelling by such person. Examples: wheelchair ramps, wider doorways, grab bars and special bathing facilities, first floor laundry, etc.
- WARNING & SAFETY DEVICES - The replacement dwelling must have operating smoke alarms, a minimum of one per floor, including the basement, and outside each sleeping area. Steps and stairways must have adequately attached and functioning handrails.

Comparable Replacement Dwelling

No person may be required to move from a dwelling unless they have been offered a comparable replacement dwelling. The Iowa DOT must offer every displaced person at least one comparable replacement dwelling and, if possible, three. The term "comparable replacement dwelling" means a dwelling which is:

- Decent, Safe and Sanitary (DSS)

- Functionally equivalent to the displacement dwelling the comparable replacement dwelling performs the same function, provides the same utility and is generally similar with regard to number of rooms and area of living space. The comparable replacement dwelling need not possess every feature of the displacement dwelling, but the principal features must be present. In determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, reasonable trade-offs maybe considered for specific features when the replacement dwelling is equal to or better than the displacement dwelling.
- Adequate in size to accommodate the occupants. It should have similar habitable area.
- In an area not subject to unreasonable adverse environmental conditions.
- In a location generally not less desirable than the displacement dwelling with respect to public utilities, commercial and public facilities and distance to schools and employment.
- On a site that is typical in size for the residential development with normal site improvements. It does not need to include specialized improvements such as swimming pools, greenhouses, over-sized garages, outbuildings, etc.
- Must currently be available to the displacee on the private market. However, the comparable replacement dwelling for a person receiving government housing assistance before displacement should reflect similar government housing assistance.
- For tenants, the assumption is that they should not pay more than 30% of gross income for rent and utilities. The test for tenants of 90 days or more or short-term owner-occupants is that the monthly rent plus utilities for the replacement dwelling does not exceed the base monthly rent (the lesser of the actual average rent including utilities or 30% of the displaced person's gross monthly income if the amount is classified as "low income" by the U.S. Department of Housing and Urban Development's Annual Survey of Income Limits for the Public Housing and Section 8 Programs) at the displacement dwelling plus the amount of the rental assistance payment. For any displaced persons with income exceeding the survey's "low income" limits, or for the person's refusing to provide appropriate evidence of income or for dependents, the base monthly rental shall be determined solely on the actual average rent plus utilities of displacement dwelling.
- All residential displacee's, except persons occupying the property after it was acquired by the Iowa DOT, are entitled to comparable replacement housing, advisory assistance.

Habitable Space

Habitable Space is the enclosed floor space for living, sleeping, cooking or eating purposes with minimum ceiling heights of 7 feet, except in rooms under a sloping ceiling. In those

instances at least one half of the floor area must have a ceiling height of 7 feet. Floor area located under the portion of the room, where the ceiling height is less than 5 feet, may not be counted when computing maximum permissible occupancy. Areas excluded as habitable space include bathrooms, hallways, closets, basements without proper egress and bedrooms that are throughways.

Replacement Housing Payments (RHP)

These payments are designed to help eligible displaced persons to move into housing which is Decent, Safe and Sanitary (DSS), adequate for their needs and comparable to the living conditions before the project required their move. These payments are available to residential displaced persons only.

There are three basic components of RHPs: Purchase Supplements, Rental Assistance and Down payment Assistance. Sometimes even these payments are not sufficient to meet the objectives of the law and regulations and it is necessary to provide last resort housing payments and/or procedures. Please see 761 IAC 111.404(1).

All RHP offers are conditional. In order to receive the maximum amount calculated, the displacee must spend the amount indicated on the offer as the basis for the determination.

Displacees are not required to relocate to housing that will keep them in the same occupancy status. Tenants are eligible for assistance in the purchase of replacement housing and owners are eligible for rental assistance.

Per 761 IAC 111.403(4) No person will be denied eligibility for an RHP solely because the person does not meet the occupancy requirements described, for a reason beyond his or her control, including:

- A disaster, emergency, hospital stay, military reserve duty; or
- Another reason such as a delay in the construction of the replacement dwelling.

All Replacement Housing Payment categories have specific requirements for eligibility and computation. However, all have a number of features in common.

- *Occupancy* - Payments may only be made to occupants of the dwelling. This means that the dwelling is their usual place of residency or abode. Summer homes are not considered primary residences.
- *Displacement* - Payments may only be made to displaced persons. A displaced person is one who moved or moved personal property from real property as a direct result of the project. See definition for Displaced Person (Displacee), in Chapter 1 of this manual or 761 IAC 111.2(9).
- *Replacement Housing Standards* - Payments may be made only, if the housing to

which the displaced person moves, meets certain standards. These standards consider size, physical condition, utility and affordability for the displacee. See the discussion of Comparable Replacement Dwelling, Habitable Space, and Decent, Safe and Sanitary (DSS) provided earlier in this chapter.

- *Time Limit For Purchase/Rental of Replacement Dwelling* - Payment may be made only if the displacee purchases or rents and occupies the replacement dwelling within one year.

Maximum Rental Supplement

The maximum rental supplement for eligible tenants may not exceed \$5,250 unless Housing of Last Resort provisions apply. (See Housing of Last Resort Chapter)

This payment is based on the difference between the monthly rent and utilities necessary to rent a comparable replacement dwelling, as determined by the Iowa DOT, and the monthly rent and utilities for the displacement dwelling. Utilities include heat, electricity, water and sewer. Computation of the rental supplement is completed using the following formula:

Monthly rent of a comparable replacement dwelling plus utilities based on local housing guidelines

MINUS

Base monthly rent of the displacement dwelling (Including utilities)

TIMES 42 (months)

Equals the maximum rental assistance payment

If \$5,250 is exceeded, Housing of Last Resort provisions will apply. In all cases, the cost of utilities must be included with both the rent of the displacement dwelling and the replacement dwellings, when computing the rental assistance payment.

Base Monthly Rent

Base monthly rent is the lesser of:

- The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement. Reasonable period of time is considered to be six months because of the diversity of weather in Iowa.
- For a tenant, who paid little or no rent for the displacement dwelling, the fair market rent should be used, unless it would result in a hardship because of the displacee's income or other circumstances.
- Thirty (30) percent of the displaced person's gross monthly income, if the amount is

classified as “low income” by the U.S. Department of Housing and Urban Development’s Annual Survey of Income Limits for the Public Housing and Section 8 Programs.

- The total of the amounts designated for shelter and utilities, if the displacee is receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

If the displacee refuses to provide evidence of their total income, is a dependent or their income exceeds the “low income” limits, the base monthly rental is assumed to be the average monthly cost for rent and utilities as discussed above.

A full time student or resident of an institution is assumed to be a dependent, unless they demonstrate otherwise.

Determining the Rental Cost of a Replacement Dwelling

Comparable replacement dwellings should be selected from the neighborhood from which the person was displaced. When that is not possible, comparables will be selected from nearby or similar neighborhoods with similar or better amenities than the displacee’s former neighborhood. See discussion of Comparable Replacement Dwelling, Chapter 3.

Finding comparably located rural rentals can present difficulties because typically fewer units are available which meet DSS requirements. In Iowa, the trend is the merging of agricultural units into larger, more efficient operations. Many times the existence of a residential dwelling on a tract is considered a detriment and removed rather than rented. In certain instances, a rural residence may be compared to one in a small town. Amenities that are important to the displacee must be considered, when searching for comparable replacement dwellings.

Three comparable replacement dwellings should be located by the Relocation Advisor so that the addresses and locations can be provided to the displacee. If less than three are available in the local market, the Relocation Advisor should document the extent of the search that was conducted for comparable housing.

The payment should be based on the most nearly representative dwelling that is equal to or better than the displacement dwelling. If at all possible, the Relocation Advisor should include two more listed properties that were considered as comparable, DSS and not listed at a higher rent than the most comparable.

The study is documentation needed for the Iowa DOT to provide monetary assistance (rental supplement), if necessary, to the displaced person in order to rent any of the comparable replacements listed on the offer.

- The study is also documentation that more than one comparable replacement property is available in the marketplace for the displacee to rent for the amount set out in the offer.

- The study allows the acquisition agent to issue the 90 day notice (See Notices in Chapter 2), thus assuring the timely completion of relocation activities prior to the letting of the construction project.

The Relocation Advisor should state the reasons for selecting the most comparable dwelling. An obviously overpriced rental should be ignored.

Determining the Approved Rental Supplement

The approved rental supplement paid is based on the actual rent paid on the DSS replacement dwelling actually occupied by the displacee.

Example:

Monthly Rent & Utilities In Study:		\$ 600.00
less Base Monthly Rent & Utilities:	-	\$ 500.00
Difference:		\$ 100.00
Times 42 months = Rental Supplement of:		\$4,200.00

If the rent and utilities of the replacement dwelling are less than the amount shown in the comparable replacement housing study, the payment will be reduced accordingly.

Example:

Monthly Rent & Utilities In Study:		\$ 600.00
Actual Monthly Rent & Utilities of Replacement:		\$ 550.00
Difference:		\$ 50.00
Times 42 months = Rental Supplement of:		\$2,100.00

If low income is considered and the displacee had a gross monthly income of \$1,200 per month, the application of the Financial Means Test (See Page 19) based on HUD low income guidelines indicates that the displacee should spend no more than 30% of their gross monthly income for their housing needs. Therefore, the base monthly rent is \$360.00, and the calculation is as follows:

Example:

Monthly Rent & Utilities In Study:	\$ 600.00
Less Base Monthly Rent:	- 360.00
Difference:	\$ 240.00
Times 42 months = Rental Supplement of:	\$10,080.00

Down Payment Assistance

Rather than continue to rent, a residential tenant displacee may decide to purchase replacement housing, and it is the policy of the Iowa DOT to encourage home ownership if it is a viable alternative for the displacee. It is not necessary for the Relocation Advisor to locate

comparables for the displacee to purchase, only to compute and advise the tenant of the potential rental supplement discussed earlier.

If the displacee elects to purchase replacement housing, they are eligible to receive the calculated rental supplemental payment plus incidental expenses, except that no extraordinary loan origination fees or points will be allowed that would allow the person to obtain a mortgage at lower than typical interest rates. In other words, points that would in effect buy down interest rates will not be reimbursed.

The full amount of down payment assistance must actually be applied to the purchase price. The displacee may not use these funds for other purposes. A commitment to spend is not sufficient.

If a tenant residential displacee had a calculated rental supplemental payment of less than \$5,250 and opts to purchase replacement housing the amount of down payment assistance will be raised to \$5,250 plus incidental expenses. The Iowa DOT (and other acquiring agencies) are authorized this option in 761 IAC 111.402(3)(a).

Reimbursement may be made for the actual and reasonable expenses incurred by the displacee in the purchase of a replacement dwelling and customarily paid by the buyer. These payments may be made at the Iowa DOT's discretion per 761 IAC 111.402(3)(a). Eligible expenses include:

- Legal, closing and related expenses, including title search, preparation of conveyance instruments, notary fees, preparation of surveys and plats and recording fees
- Lender, loan application fees and appraisal fees
- FHA mortgage insurance fees
- Loan origination or assumption fees that do not represent prepaid interest.
- Radon and termite inspection, or other inspection if required or customary in the community.
- Whole house inspections
- Credit report
- Escrow agent's fee

See 761 IAC 111.401(5) for further details.

Conversion of Payment

A displaced person who initially rents replacement housing and receives a rental assistance

payment may change his or her mind and purchase replacement housing. This can be done within one year of moving from the displacement dwelling.

In the event that the person does opt to purchase replacement housing, any rental assistance that has been paid to them will be deducted from the calculated rental supplement. This applies only to displacee's who:

- Have been receiving their rental supplemental payments in installments; or
- Did not rent replacement housing utilizing the full amount of the calculated rental supplement. For example, the rent and utilities was calculated at \$700 per month and the displacee rented a dwelling for \$650 per month.
- Received the full amount of the rental supplemental payment and it was less than \$5,250. See Down payment Assistance, below.

Preventing Subsequent Occupancy

Displaced tenants may move prior to the Iowa DOT acquiring the property and receiving possession from the owner of the property. In these instances, it is desirable to acquire the owner's right to rent the property in order to prevent having to relocate a subsequent tenant (tenant of less than 90 days). The Iowa DOT will reduce potential exposure to increased relocation costs and the owner will not suffer a loss in rental income before surrendering of the property.

Tenants are ordinarily encouraged to remain in occupancy of the property until possession is given by the owner. However, after receiving the Offer of Relocation Assistance the tenant is eligible for benefits or when there is a scarcity of available rentals, the tenant may elect to move so that they can get on with their lives.

The Relocation Advisor will bring these situations to the attention of the Relocation Supervisor and/or Production Coordinator and will discuss current rental terms and conditions in order to arrive at a fair amount to offer to the owner for the owner's right to rent to subsequent tenants. Generally this amount is the current rental. The agreement should stipulate that the owner pay utilities, or disconnect if the property is vacant, and to ensure that the integrity of the property remains intact prior to surrendering possession.

If the tenant has been given a "Notice of Intent to Acquire" and vacates the property prior to the initiation of negotiations, the Relocation Advisor should contact the landlord and execute a "Keep Vacant Agreement". See Appendix for sample form.

Chapter Four Overview

- The Relocation Advisor must identify the type and length of tenancy to determine the eligible benefits.
- Replacement Housing must be available before the displaced can be required to move from their dwelling. Replacement housing to be considered must be:
 - ❖ Decent Safe and Sanitary (DSS)
 - ❖ Be considered as comparable replacement housing.
 - ❖ Provide comparable habitable space.
- Displaced tenants are eligible for replacement housing payments (RHP's). The RHP is calculated based on:
 - ❖ Maximum Rental Supplement
 - ❖ Base Monthly Rent
 - ❖ Determining Replacement Cost of Rental Housing
 - ❖ Determining Approved Rental Supplement
- The benefits may include:
 - ❖ Down Payment Assistance
 - ❖ Conversion Payment
- It is in the best public interest to avoid subsequent occupancy. The Relocation Advisor should pursue efforts to avoid these additional costs.