

# GUIDE FOR PROPERTY OWNERS

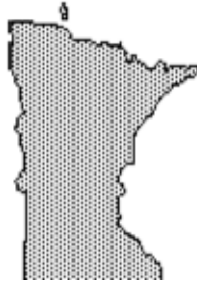


The Minnesota Department of Transportation is responsible for the administration, planning, construction, maintenance, and safety of the state's highway system and airports. Each year, Mn/DOT makes efforts to reduce traffic congestion and crashes through the use of the state's expanded trunk highway and federal interstate programs. As a result, the department may be required to purchase property owned by individual citizens.

This guide outlines the laws and procedures Mn/DOT must follow in the land acquisition process. Please review the information carefully to better understand your legal rights as a property owner.

January, 2004

## GENERAL INFORMATION



### **How Mn/DOT Acquires Property:**

Minnesota law allows the state and certain other governmental agencies to acquire property for public purposes such as schools, parks, libraries, recreation facilities, airports and highways.

The Constitutions of the United States and the State of Minnesota requires a payment of “Just Compensation” to the owner in order for property to be acquired or damaged for public use.

Payment of “Just Compensation” means that the owner is entitled to the fair market value of their property, which is generally defined as the amount the buyer and seller agree upon based on an appraisal of the property.

### **Prior to Land Acquisition:**

During the land acquisition process, a survey crew may request permission to enter your land to obtain information for the development of the proposed improvement or project.

Often times a public hearing or an informational meeting will be held to give you a chance to participate in the process of determining the location and design of the highway. (The time and place of these hearings or opportunities for hearings will be advertised in the local newspaper.)

A department agent will contact you to discuss and learn the nature and interest of those persons involved with the property. It is unlikely at this time that the agent will have complete knowledge of the final department proposal as construction plans are still being developed.

The department will then send a qualified appraiser(s) to estimate the market value of the department’s proposed land acquisition. The appraiser will contact you at that time giving you the opportunity to accompany him/her during the inspection of your property. The appraisal is normally based on studies of recent similar sales of property in your area.

In some instances, if the department determines there are minimal damages to the property, a short form appraisal or minimum damage assessment will be prepared.

The department will present the owner a copy of the appraisal report at the time of the offer.

**Please note:** you may be contacted again by authorized personnel to obtain other necessary information prior to the time an offer for purchasing can begin.

## SECTION I



**Minnesota law allows Mn/DOT to acquire land through the following methods:**

- **Direct Purchase**
- **Eminent Domain**

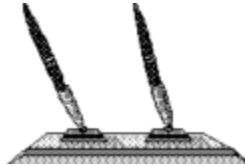
### **Acquisition of Land or Rights by Direct Purchase:**

Efforts will be made first to acquire your property through the direct purchase procedure. Direct purchase means a department representative will contact you in an attempt to purchase the property based on the estimated market value provided from the appraisal. You will then be given a written statement that includes the amount being offered for the property rights. In instances where only a part of the property is to be acquired, the statement will separate the amount of money to be paid and the amount (if any) for damages to the remainder of the property. The department will provide you with a copy of the appraisal report. If the acquisition leaves you with an uneconomic remnant, the department will offer to purchase that remnant.



If you accept the offer, you will sign an “Offer to Sell and Memorandum of Conditions” which gives the department permission to buy your property. You will also sign the actual “deed” which conveys the property to the state.

In certain cases, the department will not need to purchase the actual property but will need to purchase certain “rights” from the property. These rights may include drainage easements, extinguishment of access, temporary easements, etc. In this case, you will only sign the actual document that grants those rights to the state.



The department will, at its own expense, furnish all documents necessary to complete the sale or purchase of rights, to make the necessary examination of title, and to record the documents of conveyance. All documents are subject to, and are conditional upon, written acceptance by the department or other acquiring authorities.

After the legal documents have been recorded, payment will be processed. If there is a mortgage and all or a major portion of the property is being acquired, a separate check payable to the mortgage holder will be drawn for the remaining balance of the mortgage including interest to the date of payment. The check for your equity will be mailed directly to you. If only a part of your property is to be acquired, the department will ask for a partial release of mortgage. In this instance, the mortgage holder will also be named on the check. It is strongly recommended that you contact your mortgage holder to determine distribution of the funds prior to the signing of legal documents.

By agreement, you may retain and remove any or all improvements located on your property, but removal of such improvements must be made at your own expense. The salvage value of the improvements retained by you will be deducted from the amount of the offer.

The department will reimburse you for certain incidental expenses incurred in transferring the title to the state and a department agent will assist you in filing a claim. Examples of the types of reimbursements are as follows:

- A. Service fees charged by the mortgage holder for release of mortgage
- B. Prepayment penalty of mortgage
- C. Abstract costs
- D. Probate court costs

You are also eligible for reimbursement of any reasonable appraisal costs performed by a licensed appraiser, up to a maximum of \$1,500.

If any of your property is being acquired, it will be necessary that all current and delinquent real estate taxes, as well as all special assessments, be paid in full. The department agent will advise you on the payment of taxes due.

Unless some unusual circumstance exists, you will be able to occupy your property for a period of 90 days from the date of acceptance. This period will be increased to 120 days if the construction timetable permits such an extension. No charge to the owner will be made for occupancy during this period. However, if you request to stay longer than the 120 days, and the department agrees, you must sign a lease for the property at a rate (fair market value) determined by the department.

In addition to receiving the fair market value for the land or rights taken, you may be entitled to certain relocation benefits. A relocation or purchasing agent will provide you with the necessary information and a relocation booklet that explains the program.

**Please note:** If you have to move from your home; a decent, safe, and sanitary replacement dwelling must be available to you, on a nondiscriminatory basis, prior to your displacement. Please refer to the relocation section on page 10, and/or the relocation booklet.



You are not required to give up possession of your property until:

1. you have been paid the agreed purchase price, or
2. you have been paid an award of commissioners, or
3. an amount at least equal to the department's approved appraisal of the value of your property is deposited with the court for your benefit, or
4. the award resulting from a condemnation proceeding is deposited with the court.



## **SECTION II**

### **Land Acquisition By Eminent Domain:**

Eminent domain is a legal process used for acquiring property for public purposes. Eminent domain, also known as condemnation, is used when the price of the property cannot be agreed upon by the seller and buyer or when title to the property is defective. The department must start the process early to assure the property will be acquired and vacated in time to meet construction contract requirements. After an offer has been made, you will be given at least 30 days in which to consider it before the eminent domain process begins.

Eminent domain proceedings are commenced by the filing of a petition with the court administrator. A hearing on the petition will be scheduled and notice of this hearing will be served to you by certified mail. If you do not return the Notice and Acknowledgement of Service by mail, you will be personally served with notice of the hearing by a deputy of the County Sheriff's Office. Service must be made in the same manner as any civil action to fulfill the requirements of state law.

The notice of the hearing on the petition will inform you of the hearing date, time, place and type of acquisition. The notice also will describe the property to be acquired and will contain a list of the names of all parties who are shown to have an interest in the property.

The hearing on the petition is usually held in the courthouse of the county in which the property is located. An attorney will represent the department and will present the petition to the court. A department representative also will be available to answer questions regarding engineering details, design aspects of the project and construction matters. The court will appoint three qualified and impartial residents of the county in which the land is located to act as commissioners. The commissioners will view each piece of property, hold valuation hearings and determine the damages that the property will, in their opinion, sustain as a result of the acquisition. The commissioners should not have any financial interest in any of the properties nor should they be related to any of the property owners or closely involved in any business dealings with a property owner.

After the three court-appointed commissioners have taken their oath of office, they will arrange for viewings and hearings with you and other affected property owners. You will be notified of the date and time when a viewing or valuation hearing will be held.



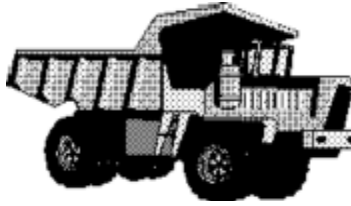
It is the general policy of the department to have an attorney from the Office of the Attorney General and an engineer present at the viewings and hearings. Their function is to assist the commissioners and property owners by answering technical questions of a legal or engineering nature.

The chairman of the commission, who presides over the hearings, will likely invite you to express your opinion as to the amount of damages you feel your property has sustained and to furnish such evidence for purposes of assisting the commissioners in determining an award of damages. The commissioners have approximately 270 days to file their award of damages. You may represent yourself at these hearings, or you may choose to be represented by an attorney. You should understand that you bear the cost of any attorney's fees. Whether or not you hire an attorney is your decision.

Title and possession of the property shall pass to the department after filing of the award by the court-appointed commissioners. However, the department usually requires title and possession of all or part of the owner's property prior to the filing of an award by the court-appointed commissioners. In these cases, the department shall, at least 90 days prior to the date on which possession is to be taken, notify the owner of the intent to possess the property. Prior to taking title and possession, the department shall pay to the owner, or deposit with the court, an amount equal to the department's approved appraisal of value. Title and possession is set for 35 days after the hearing on the petition. This is commonly referred to as the "Quick-Take" Law of the State of Minnesota. Interest is paid on the amount of the award that exceeds the Quick-Take payment.

You may wish to retain a licensed real estate appraiser to provide you with an appraisal of the market value of your property. The commissioners may, in their discretion, allow reimbursement for an appraisal not to exceed \$500.00.

## **When Can Construction Start:**



The state may begin to use the property when it obtains title and possession of it. Title and possession passes when you are paid for the property or at a later date specified in the purchase agreement.

If your property is acquired through eminent domain, title and possession will pass as stated in the preceding section.

You may also grant permission to the state for it to enter your property and begin construction prior to title and possession passing to it. You could do this by signing a Right of Entry or a Permit to Construct.

## **Appealing the Commissioner's Award:**



It is important to note that if you are dissatisfied with the commissioner's award, you have the right to appeal to the District Court. The department also has the right to appeal the award.

Any appeal must be made within 40 days to the Court Administrator from the date the commissioners file their award. A notice of such appeal must be mailed to all parties of record having an interest in property described in the appeal. Within 10 days of such mailing any other party may appeal. The 40 days are counted from the date of the filing of the commissioner's award with the Court Administrator, not from the date you received the notice of the award from the department.

If the department appeals the award, you will be notified by letter from the Office of the Attorney General. The law states that unless proper appeal is taken by either party within 40 days, neither party can amend or adjust the amount, terms or conditions of the award. If no appeal is taken, payment will be made following the expiration of the 40-day appeal period. If only one party appeals the commissioner's award, the appealing party may later dismiss the appeal and the award, plus interest, will be paid.

### **Just Compensation by a Jury:**



If you or the department, or both, appeal to the District Court, the compensation to which you are entitled becomes a question to be decided in a trial by jury. Simply because an appeal is taken by either party does not necessarily mean the matter will go to court. The department will make a diligent effort to settle the case prior to trial.

However, as noted earlier, the law states the department cannot amend or adjust the amount of the commissioner's award unless proper appeal is taken by either party within the time allowed.

If the appeal is settled out of court, you can expect final payment by the department within 45 days of receipt of a properly signed stipulation and settlement. If the appeal goes to trial in District Court, final payment will be made within 45 days after a final judgment. When the jury verdict is appealed to a higher court, final payment will await the disposition of that appeal.

## SECTION III

### Relocation Payments:



In accordance with the Federal Uniform Relocation Act and subsequent legislation, you may be entitled to certain payments for such things as a housing supplement, moving costs, re-establishment costs, incidental expenses and closing costs. An agent of the department will review your eligibility for these relocation claims.

An explanation of relocation payments and services can be found in a separate booklet titled *Relocation Assistance Information*. This booklet will address many of your questions and concerns. Please request a copy from the department if you have not received one.

## SECTION IV

### Additional Information:



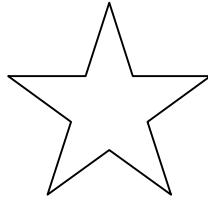
#### Taxpayer Identification Numbers

The Internal Revenue Service (IRS) requires the property owner to furnish the department with a Taxpayer Identification Number before payment can be made. An approved form (IRS W-9) will be provided by the department.

#### Minnesota Well Disclosure

State law requires that sellers of real estate inform prospective buyers of any wells located on the property, even if those wells are not in use. If any wells are present, the seller completes a formal Well Disclosure Certificate provided by the department.

## SUMMARY AND CONCLUSION



The information in this *Guide for Property Owners* is brief and general. If you desire additional information, please request assistance from the department.

All agents of the department are committed to providing better and safer highways for public use. We realize our obligation to all property owners to be respectful of your rights while carrying out the duties of highway construction. We are ready to assist you in any way that we can during this process.



If at any time you have questions, you are invited to seek the services of the department or visit the Web site at [Rocky.dot.state.mn.us](http://Rocky.dot.state.mn.us).



Please contact the Minnesota Department of Transportation at the following phone numbers:

|                            |              |
|----------------------------|--------------|
| District 1 - Duluth        | 218-723-4870 |
| District 2 - Bemidji       | 218-755-3800 |
| District 3 - Brainerd      | 218-828-2460 |
| District 4 - Detroit Lakes | 218-847-1500 |
| District 6 - Rochester     | 507-285-7350 |
| District 7 - Mankato`      | 507-389-6351 |
| District 8 - Willmar       | 320-231-5195 |
| Metro District - Roseville | 651-582-1000 |
| Attorney General's Office  | 651-297-2040 |

The address for the Director of the Office of Land Management, Minnesota Department of Transportation is:

Transportation Bldg., MS 630  
395 John Ireland Blvd.  
St. Paul, MN 55155  
General Information No. 651-296-3221

The address for the Office of the Attorney General, Transportation Division is:

1800 NCL Tower  
445 Minnesota Street  
St. Paul, MN 55101-2134

When writing the department for assistance please:

1. Be sure to mention the "C.S." number (state project number):  
Example: *C.S. 6982 (35=395) 907*
2. Be sure to mention the parcel number assigned to your property:  
Example: *Parcel 201; Parcel 3A; Parcel 14BB; Parcel 10; etc.*
3. Be sure to mention the title of the condemnation action that affects your property:  
Example: *"State vs. John Jones, et al"*
4. Be sure to mention the name of the state's attorney and/or department engineer who dealt with you regarding your property.

Prepared by:  
Minnesota Department of Transportation  
Office of Land Management  
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