



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia  
Secretary Of State

## NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Highways

RULE TYPE: Legislative

TITLE-SERIES: 157-02

RULE NAME: Disposal, Lease, and Management of  
Real Property and Appurtenant  
Structures and Relocation Assistance

CITE AUTHORITY: W.Va. Code §§17-2A-8, 17, 19, and 20

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

**BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.**

Yes

**Rita A Pauley -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**

TITLE 157  
LEGISLATIVE RULES  
DEPARTMENT OF TRANSPORTATION  
DIVISION OF HIGHWAYS

SERIES 2  
DISPOSAL, LEASE AND MANAGEMENT OF  
REAL PROPERTY AND APPURTENANT STRUCTURES AND  
RELOCATION ASSISTANCE

**§157-2-1. General.**

1.1. Scope. -- This rule governs the disposal, lease and management of real property and appurtenant structures, and relocation assistance for persons dislocated by highway construction.

1.2. Authority. -- W.Va. Code §17-2A-8, ~~§17-2A-9a~~, §17-2A-17, §17-2A-19, and §17-2A-20 ~~and §54-3-1 et seq.~~

1.3. Filing Date. -- ~~April 6, 2018~~

1.4. Effective Date. -- ~~April 6, 2018.~~

1.5. Sunset Provision -- This rule shall terminate and have no further force or effect on ~~April 6, 2023~~ August 1, 2028.

~~§157-2-2. Amendment to Former Rule.~~

~~2.1. Amendment to Former Rule. — This legislative rule amends the West Virginia Legislative Rule, "Division of Highways, Series 2, Acquisition, Disposal, Lease and Management of Real Property and Appurtenant Structures and Relocation Assistance", made effective April 20, 1995. The revisions reflect updated procedures and reorganization of the Right of Way Division~~

~~§157-2-2~~ §157-2-1. Sale, Exchange or Lease of Real Property and Structures.

~~3.1.~~ 2.1. Relocation and Property Management Section of the Right of Way Division. -- The sale, exchange, or lease of real property or any interest or right therein or any structure thereon, held by the Department of Transportation, Division of Highways, shall be under the control and management of the Relocation and Property Management Section of the Right of Way, Division of the Division of Highways.

~~3.2.~~ 2.2. District Office. -- In each District Office, the District Right of Way ~~Agent~~ Manager or his or her designee shall perform the duties and functions relating to the sale, exchange or lease of real property, any interest therein, or structures thereon, within the District.

~~3.3.~~ 2.3. Excess Real Estate. -- -- Excess real estate, as used in ~~these rules shall mean, this rule, means~~ any real property or any interest or right therein, which is held by the Division of Highways and which is not necessary or desirable for present or presently foreseeable future state road purposes, or any directly or indirectly related purposes connected with the construction, maintenance or operation of state roads. Any land within the right of way limits or a property required by the Division of Highways shall not be considered excess real property without the prior approval of the Commissioner of Highways or his/her designee. The Commissioner of Highways has exclusive authority to designate excess real property. All deeds transferring

any interest owned by the Division of Highways shall be quitclaim deeds.

~~3.4.~~ 2.4. Temporary Disposition. – Temporary disposition of real property or any interest therein, not needed for state road purposes, may be either by lease or permit.

~~3.5.~~ 2.5. Permanent Disposition.

~~3.5.1.~~ 2.5.1. Excess real estate may be permanently disposed of by:

~~3.5.1.a.~~ 2.5.1.a. Exchange for other real property needed for any state road purpose.

~~3.5.1.b.~~ 2.5.1.b. Public sale.

~~3.5.1.c.~~ 2.5.1.c. Abandonment. In the usual instance will apply only to road right of way easement.

~~3.5.1.d.~~ 2.5.1.d. Private negotiated sale at fair market value to the principal abutting landowners.

~~3.5.2.~~ 2.5.2. If excess real estate acquired subsequent to December 31, 1973, through voluntary real estate acquisition or exercise of the power of eminent domain is to be sold, it shall be first offered for sale to the principal abutting landowner(s) at a cost equal to the amount paid by the Division of Highways in acquiring the real estate less any applicable reduction attributable to the value of improvements which have been removed, plus an adjusted amount to reflect interest at a rate equal to the increase in the consumer price index for all urban consumers as reported by the United States Department of Labor since the disbursement of funds, provided that the following conditions are met:

~~3.5.3.~~ 2.5.3. A principal abutting landowner for purposes of this subsection is an abutting landowner who is an individual from whom the real estate was acquired or his or her surviving spouse or descendent as defined in West Virginia Code, §42-1-1; and

~~3.5.b.~~ 2.5.b. The primary use of the principal abutting property has not substantially changed since the time of the acquisition. If there is no principal abutting landowner(s), all abutting landowners shall have a right of first refusal to purchase the property as provided in subparagraph 2.5.c.

~~3.5.e.~~ 2.5.c. The right of first refusal gives the abutting landowners the right to purchase the excess property as provided in this section. The abutting landowner shall be notified in writing sent by certified mail, return receipt requested, of his or her right of first refusal and that he or she has sixty (60) days to exercise this right. The right of first refusal is exercised by an abutting landowner through his or her remittance of the price determined by the Division of Highways to be fair market value within sixty (60) days of notification. If no abutting landowner exercises the right of first refusal by remitting the purchase price to the Division of Highways within sixty (60) days, then the property may be otherwise sold. The Division of Highways will recognize and act upon a written release of the right of first refusal. The right of first refusal is not transferrable or assignable.

~~3.5.d.~~ 2.5.d. If multiple abutting landowners opt to purchase the property, the property shall be sold at public auction.

~~3.5.e.~~ 2.5.e. For purposes this rule, an abutting landowner is an abutting landowner at the time of the disposition. Such landowner shall be determined by the Commissioner's employees or agents. In all cases the landowner shall submit proof satisfactory to the Division of Highways of his or her ownership, which may

include but is not limited to a certified copy of his or her deed, an abstract of title certified by an attorney licensed to practice law in West Virginia, payment of current year's taxes evidenced by tax receipt, or in the case of heirs who do not have deeds, such proof shall be by way of certified documented records of heirship or intestate ownership. Principal abutting landowners and abutting landowners shall be determined in the same manner.

~~3.5.6.~~ 2.5.6. If public utilities are present on property being permanently disposed, that portion being used by the utility shall be excepted and/ or reserved from the conveyance.

~~3.5.7.~~ 2.5.7. The provisions of 23 CFR §710.403 and §710.405 shall be followed when federal highway aid funds were used to purchase the property being offered for the sale, exchange, or lease.

~~3.6.~~ 2.6. Initiating Disposition. -- Any person, firm or corporation, in accordance with the provisions of subsection 3.3 of this rule may make a written request to the District Manager of the Division of Highways District where the property involved is located, or directly to the Commissioner of Highways in Charleston, West Virginia, for the disposition of any parcel or tract of real estate owned or otherwise held by the Division of Highways. No real estate owned or held by the Division of Highways shall be sold, offered for sale, or released in any manner until such sale, offer or release has been approved by the District Manager, the State Highway Engineer, and the Commissioner of Highways or his or her designee.

~~3.7.~~ 2.7. Finding of Value as Hiking Trail. -- Prior to any transfer, sale or other disposal of real property, the Commissioner of Highways must determine that the property or right of way has no significant value to the state as a hiking trail or serve as a link between two or more state owned properties. Such determination is not required if the property is within 600 feet of any dwelling house and the owner of the dwelling house is acquiring the property from the Division of Highways.

#### **§157-2-4. Exchange of Real Property.**

4.1. Property Not Necessary for Road Purposes. -- Any real property, or any part thereof, or any interest or right therein the Commissioner determines is not necessary or desirable for present or presently foreseeable state road purposes may be exchanged for other real property, or any interest or right therein, which is determined by the Commissioner to be necessary or desirable for present or presently foreseeable state road purposes.

4.2. Property Necessary for Road Purposes. -- Any real property, or any part thereof, or any interest or right therein, even though it may be necessary or desirable for present or presently foreseeable state road purposes, may be exchanged for other real property, or any interest or right therein, in close proximity thereto which the Commissioner determines to be of equal or superior useful value for present or presently foreseeable future state road purposes.

4.3. Appraisal. -- Any exchange of real property, or any interest therein, must be based on an approved appraisal of each separate property involved, and a determination by the Right of Way Chief Appraiser or his or her designee for the Commissioner of Highways at the fair market value of the property. The Director of the Right of Way Division shall make a recommendation to the Commissioner as to whether the property the Commissioner desires to acquire by exchange is of equal or superior useful value for present or presently foreseeable future state road purposes as the property already owned by the Division.

4.4. Difference in Value. -- The Commissioner of Highways may pay or require payment of any substantial difference in the value of the properties being exchanged and may move or pay the cost of moving buildings, structures, or appurtenances in connection with any such exchange.

### §157-2-5. Public Sale of Excess Real Property.

5.1. Public sales of excess real property shall be in accordance with this section. In conformity with state and federal law, all property shall be sold in a manner which will bring the highest and best price.

5.2. Auction. -- Excess real property, or any interest or right therein or structure thereon, not purchased by an abutting landowner or public body in a negotiated sale or which was not acquired for use, or used, as a highway, shall be sold at public auction in the county in which the real property, or the greater part by value, is located. Such sale shall be made as provided by law and this rule. Conveyance of real property by the Division of Highways to other public bodies may be handled on a negotiated basis. Any public body which requires the Division of Highways to purchase real property for highway purposes at fair market value shall be required to purchase excess real property from the Division of Highways at fair market value. Such conveyances are subject to the approval of the Board of Public Works.

5.3. Published Notice of Auction. -- Notice of public auction of excess real property shall be published on three different days in a newspaper of general circulation in the county in which the real property, or a part thereof, is situate.

5.3.a. The first publication of the notice shall be at least 20 days prior to the date of the public sale.

5.3.b. The notice shall set forth the time, place, date and terms of the proposed sale and a general description of the real property to be offered for sale.

5.3.c. The notice shall clearly state that the Division of Highways reserves the right to reject any or all bids received at a sale.

5.3.d. An affidavit of publication of notice, or a copy of the published notice, shall be obtained and filed with the Right of Way Division Office.

5.4. Conduct of Auctions. -- The Relocation and Property Management Section Manager, or his or her designee shall conduct, or cause to be conducted, the public auction at the time and place specified in the notice. Another person appointed by the Relocation and Property Management Section Manager, or his or her designee, shall act as clerk and record the high bid and the name and address of the high bidder. The clerk shall also receive any monies paid at the time of sale and give a receipt therefor to the highest bidder. The Relocation and Property Management Section Manager, or his or her designee, shall promptly forward the results of the auction, a copy of the receipt, a cashier's or certified check payable to the Division of Highways for all money received, and his or her recommendations to the Director of the Right of Way Division.

5.5. Closing Sales of Real Property. -- If the sale is approved by the Right of Way Division and the Commissioner of Highways, an executed quitclaim deed shall be forwarded to the District Office for completion of the transaction. The District Right of Way ~~Agent~~ Manager shall collect any balance of money due in the form of a cashier's or certified check prior to the delivery of the executed quitclaim deed. Any monies so received shall be promptly forwarded to the Director of the Right of Way Division. The Relocation and Property Management Section Manager, or his or her designee will submit a funds transmittal letter and the cashier's or certified check, to the Accounts Receivable Section of the Finance Division. The District Right of Way ~~Agent~~ Manager shall send the Director of the Right of Way Division a copy of the recorded deed.

### §157-2-6. Disposition of Structures.

6.1. Methods of Disposing of Structures. -- Structures which are not needed for road purposes, but which are situated on land required for present or future contemplated road needs shall be disposed of by the following methods:

- 6.1.1. Retention by former owner as a part of the consideration of acquisition of the land; or
- 6.1.2. Public sale; or
- 6.1.3. Letting a demolition contract; or
- 6.1.4. Giving to a local public agency; or
- 6.1.5. Removal by Division of Highways maintenance forces; or
- 6.1.6. Inclusion in the prime construction contract.

6.2. Retention by Owner. -- Property owners may be permitted to retain improvements for clearance from the right of way. Such improvements must be properly removed within the time agreed to between the property owner and the Commissioner of Highways, and if not so removed, the Commissioner of Highways, shall take proper action to clear the right of way of any such improvements.

6.3. Public Sale of Structures. -- The sale of improvements upon state road property shall be at public auction in accordance with West Virginia Code §17-2A-19 and this rule.

6.3.1. Notice of Auction -- The District Right of Way ~~Agent~~ Manager shall cause a notice of the proposed sale of structures to be published during at least three different weeks in a newspaper of general circulation in the county in which the structures are located. The first such notice shall be published at least 20 days prior to date of the proposed public auction.

6.3.2. Form of Notice -- Notice of sale of structures shall set forth the time, place, and terms of the proposed sale. The notice shall clearly state that the Commissioner of Highways reserves the right to reject any ~~and~~ or all bids. The notice shall describe the structures to be sold, indicate the location of the structures, set forth the terms of payment, and inform prospective bidders where they may obtain a copy of the specifications for removal and clearance of the structures and terms of the proposed bill of sale.

6.3.3. Proof of Publication -- An affidavit of publication of the notice shall be obtained and filed with the Right of Way Division.

6.3.4. Auction Procedure -- At the time and place specified in the notice, the Relocation and Property Management Section Manager, or his or her designee, shall first advise prospective bidders concerning the terms under which the improvements may be sold. Terms discussed include those concerning payments to the Division of Highways, the posting of a performance bond and rules governing the removal of the improvements and cleanup. After completing the discussion concerning the terms, the auctioneer may commence taking bids.

Only after all such items have been read shall the auction commence. Another person appointed by the Relocation and Property Management Section Manager, or his or her designee, shall act as clerk to record the high bid and the name and address of the high bidder on each property. The clerk shall also receive any monies paid at the time of the sale and give a receipt therefor to the high bidder. The clerk shall retain two

copies of each such receipt.

6.3.5. Recommendation of Approval -- If time is of the essence, the Relocation and Property Management Section Manager, or his or her designee, may request an advance indication from the Director of the Right of Way Division as to whether the high bid will be acceptable and inform the bidder that contingent upon final approval of the bill of sale, he or she may make arrangements to remove the improvement. However, actual work of removing the structure cannot begin until final approval has been given by the Director of the Right of Way Division. If advance notice is given the high bidder, he or she shall be clearly advised that the sale is still contingent upon approval by the Director of the Right of Way Division, and that the advance notice does not bind the Division of Highways.

6.3.6. Bill of Sale -- The bill of sale, in quadruplicate, shall be completed and signed by the purchaser on the day of the auction for immediate transmittal to the Right of Way Division with the results of the auction and the recommendations of the Relocation and Property Management Section Manager.

6.3.7. Approval and Closing of Sale -- If the sale is approved by the Director of the Right of Way Division, the District Office will notify the successful bidder by giving him or her the original, fully executed bill of sale and shall obtain any balance due by certified or cashier's check and receive any required performance bond.

6.3.8. Removal of Structures. -- All improvements shall be removed from the state right of way by the buyer, at his or her own expense, in accordance with the terms of the bill of sale, or any extension of time authorized in writing by the Director of the Right of Way Division. If such improvements are not removed, title thereto shall revert to the Division of Highways and all sums paid pursuant to said bill of sale shall be forfeited as liquidated damages.

6.4. Demolition Contract. -- Removal of structures by demolition contract shall be solicited by public advertisement. The contracts are subject to the relevant provisions of "Construction and Reconstruction of State Roads," 157CSR3.

6.5. Removal of Structures From the Right of Way by Fire Department. -- Structures which have been offered for sale but no acceptable bids were received may be removed by local fire departments after approval of the Director or Assistant Director of the Right of Way Division.

6.6. Removal by Maintenance Forces. -- Removal by maintenance forces may be made after bids have been taken if there is no acceptable bid. Maintenance forces may remove structures prior to taking bids with prior approval of the Director of the Right of Way Division when removal by maintenance forces is in the public interest.

6.7. Removal by Contractor. -- Structures may be left on the right of way for the prime contractor to remove when in a particular case it is more practicable or in the public interest to do so.

#### **§157-2-7. Persons Ineligible to Purchase Real Property or Structures from the Division of Highways.**

7.1. Employees of the Division of Highways. -- No employee of the Division of Highways, or his or her immediate family, is eligible to bid, either directly or indirectly on any real property or structure offered for sale by the Division of Highways.

#### **§157-2-8. Lease of Division of Highways' Property.**

8.1. General. -- In all instances where property or any interest or right therein, including airspace or any part thereof, is being held by the West Virginia Division of Highways, it may be leased pursuant to the provisions of West Virginia Code §17-2A-19 and §17-2A-19a; provided, that the amount of the lease rental must be updated every five years based upon then existing market conditions unless longer lease terms have been approved by the Commissioner for utility accommodation leases. The leases will be made in accordance with the following requirements.

8.2. Prior Approval. -- Prior approval of a lease must be obtained from the District Manager and Commissioner of Highways except where the lease is a temporary continuation of an existing occupancy at the time of the Division of Highways acquisition and does not interfere with right of way clearance.

8.3. Appraisal. -- Rentals shall be based on a written approval and determination of fair rental value approved by the Commissioner of Highways or his or her designee.

8.4. Continuation of Existing Lease. -- When a property acquired by the Division of Highways is subject to an existing lease or tenancy, the Relocation and Property Management Section Manager, or his or her designee, with the approval of the Director of the Right of Way Division, may continue the existing lease at the existing rental amount; provided, that proper arrangements are made to vacate the property promptly, in advance of its need for highway construction; provided, that the amount of the lease rental must be updated every five years, based upon existing market conditions unless longer lease terms have been approved by the Commissioner for utility accommodation leases.

8.5. Owner Occupant Retaining Possession. -- Where property is acquired and the owner occupant is permitted by the Division of Highways to retain possession in excess of the time allotted under the option or 30 days after closing, whichever is greater, the former owner occupant may rent the property or interest therein at a fair rental determined by the Commissioner of Highways or his or her designee, provided satisfactory arrangements are made for vacating the property prior to its need for highway purposes.

8.6. Rental Principles. -- Division of Highways property which is leased to others, except to an owner occupant or tenant at time of acquisition, shall be leased in accordance with the following principles:

8.6.1. ~~The Commissioner of Highways~~ Right of Way Chief Appraiser or his or her designee shall establish the fair rental value for the Commissioner of Highways.

8.6.2. Each prospective tenant shall be required to execute a lease agreement which has been approved by the Right of Way Legal Section.

8.6.3. All rent is due and payable on the first day of each rental period.

8.6.4. All lease agreements shall be in effect for an agreed term and may provide for termination upon thirty (30) days written notice by either party.

8.6.5. The Division of Highways shall make no repairs or alterations without written authorization from the Director of the Right of Way Division.

8.6.6. The Division of Highways assumes no liability for any utility bills, sewer charges, or trash disposal costs.

8.6.7. No tenant shall be allowed to occupy Division of Highways property until he or she has paid first to the Division of Highways (by certified or cashier's check or money order) one (1) month's rent in

advance.

8.6.8. No employee of the Division of Highways may occupy Division of Highways property without authorization from the Commissioner of Highways.

8.6.9. The District Property Manager shall only collect the first rental payment. All future rents shall be paid directly by the tenant to the Accounts Receivable Section, Finance Division of the Division of Highways. The payment requirements shall be clearly stated on the rental agreement or lease.

8.6.10. Occupants of properties acquired by the Division of Highways may remain in possession of such properties as tenants of the Division on a preferential basis.

8.6.11. The Division of Highways may lease its property to a public body for an amount less than fair market rental value; provided, that such property is used by that public body for public purposes. No public body may sublet any property owned by the Division of Highways for any purpose without the consent of the Commissioner of Highways.

#### **§157-2-9. Rental of Property from Other Persons.**

9.1. General. -- The Division of Highways may lease real property from other persons upon the written recommendation of the District Manager and the Director of the Right of Way Division and with the written approval of the Commissioner of Highways. If the property to be rented is for use of a Headquarters Division, the approval of the District Manager is not required. When recommended and approved, the amount of the rental shall be approved in writing by the Commissioner of Highways or his or her designee.

9.2. Office Space Leases. -- Pursuant to the provisions of West Virginia Code §5A-5, et seq., as amended, office space is leased for the Division of Highways by the Commissioner of Administration upon receipt of proper requisition from the Commissioner of Highways.

#### **§157-2-10. Damage by Owner or Occupant.**

10.1. General. -- The owner or occupant of real property acquired by the Division of Highways who continues to do so by permission after the date of acquisition is responsible for all damages to or loss of the improvements which result from the negligent or willful actions of the owner or occupant.

10.2. Adjustment of Damages. -- If the owner or occupant does not pay for damages to the property, the Commissioner of Highways or his or her designee, shall determine the value of the missing or damaged property and make appropriate adjustment into the settlement price. If satisfactory adjustment is not made, the Legal Division shall take whatever action is necessary to protect the State's interest.

#### **§157-2-11. Relocation Assistance.**

##### **11.1. Incorporation of Federal Regulations.**

11.1.1. Federal Aid Highway Projects -- The West Virginia Division of Highways adopts and incorporates by reference, the provisions, procedures, and regulations promulgated by the Federal Highway Administration of the United States Department of Transportation as they relate to federal aid highway projects, contained in 49 CFR Part 24.

11.1.2. State Highway Projects -- The West Virginia Division of Highways adopts and incorporates

by reference, the provisions, procedures and regulations promulgated by the Federal Highway Administration of the United States Department of Transportation, insofar as they define terms, and relate to advisory assistance and relocation payments for state highway projects, contained in 49 CFR Part 24.

11.2. -- Relocation assistance shall be provided in accordance with the provisions of W.Va. Code §17-2A-20 and §54-3-1 *et seq.*