

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #6

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OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: Department of Transportation, Div. of Highways TITLE NUMBER: 157

AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: II

TITLE OF RULE BEING AMENDED: Acquisition, Disposal, Lease and Management
of Real Property and Appurtenant Structures and Relocation Assistance

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) Senate Bill No. 243

SECTION 64-8-1, PASSED ON March 10, 1990

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: June 1, 1990

Fred VanKirk / jc

Fred VanKirk
Acting Commissioner-
State Highway Engineer

WEST VIRGINIA LEGISLATIVE RULES

ADMINISTRATOR OF HIGHWAYS

CHAPTER 17-2A

SERIES II

FILED

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Title: Acquisition, Disposal, Lease and Management of Real Property and Appurtenant Structures and Relocation Assistance

Section 1. General

1.1. Scope. -- These Interpretive, Legislative and Procedural rules and regulations relate to the acquisition, disposal, lease and management of real property and appurtenant structures, and relocation assistance for persons dislocated by highway construction.

1.2. Authority. -- These rules and regulations are issued under authority of West Virginia Code, Chapter 17, Article 2A, Sections 5, 8, 17, 19, 19A and 20.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Amendment to Former Rule. -- This legislative rule amends the West Virginia Legislative Rule, "Department of Highways, Series 2, Acquisition, Disposal, Lease and Management of Property and Appurtenant and Relocation Assistance", filed December 16, 1982 and effective January 1, 1983.

Section 2. Acquisition of Real Property

2.1. General. -- The acquisition of real property, and interests therein, required for the state road program and system, is governed by statute. (Reference, in general, Chapter 17, Article 2A, Sections 8 and 17, Code.) Needless to say, the exercise of the sovereign power of eminent domain is controlled by substantive law principles.

Section 3. Sale, Exchange or Lease of Real Property and Structures

3.1. Property Management Unit of 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 Property Management Unit of the Right of Way Division of the Division of Highways.

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

3.3. Definition: Excess Real Estate. -- Excess real estate, as used in these rules, shall mean 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 Administrator of Highways or his designee.

(a) Temporary Disposition - Temporary disposition of real property or any interest therein, not needed for state road purposes, may be either by lease or permit.

(b) Permanent Disposition - Excess real estate may be permanently disposed of by:

(1) Exchange for other real property needed for any state road purpose.

(2) Public Sale.

(3) Abandonment. (In the usual instance will apply only to road right of way easement.)

(4) Private negotiated sale to principal abutting landowners, provided however that this method of permanent disposition of real property shall be available only with respect to former railroad rights-of-way owned by the Division of Highways and those properties owned by the Division of Highways which were formerly used as turnpike roads.

3.4. Initiating Disposition. -- Disposition of real estate owned or held by the Division of Highways may be initiated by a request of some member or group of the general public.

(a) Public Request - Any citizen or group of citizens may make a written request to the District Engineer of the Division of Highways District where the property involved is located, or such request may be made directly to the Administrator 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. Regardless of the manner in which the request is initiated, 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 Engineer, the State Highway Engineer and the Administrator of Highways or his designee.

3.5. Finding With Respect to Value as Hiking Trail -- No real property owned by the Division of Highways shall be transferred, sold or otherwise disposed of unless the Administrator finds that such property or right-of-way has no significant value to the state as a hiking trail and does not serve as a link between two or more state owned properties, except that any such property that lies within six hundred feet of any dwelling house may be transferred, sold or otherwise disposed of without such a finding by the Administrator.

Section 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, which is deemed by the Administrator 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 deemed by the Administrator to be necessary or desirable for present or presently foreseeable state road purposes. (Reference: Chapter 17, Article 2A, Section 19, Code.)

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 Administrator deems of equal or superior useful value for present or presently foreseeable future state road purposes. (Reference: Chapter 17, Article 2A, Section 19, Code.)

4.3. Appraisal. -- Any exchange of real property, or any interest therein, must be based on approved appraisal of each separate property involved, and a determination by the Chief Reviewing Appraiser of the Division of Highways of the fair market value of properties. The Director of the Right of Way Division shall make a recommendation to the Administrator as to whether or not the property the Administrator 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 Administrator 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.

Section 5. Public Sale of Excess Real Property

5.1. Auction. -- All excess real property, or any interest or right therein or structure thereon, shall be sold at public auction in the county in which the real property, or the greater part thereof, in value, is located. Such sale shall be made as provided by law and these regulations. Conveyance of real property by the Division of Highways to other public bodies may be handled on a negotiated basis. Such conveyances are subject to the approval of the Board of Public Works. (Reference, Chapter 17, Article 2A, Section 19, Code.)

5.2. Published Notice of Auction. -- Notice of a 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.

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

(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.

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

(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.

5.3. Conduct of Auctions. -- The District Right of Way Agent shall conduct, or cause to be conducted, the public auction at the time and place specified in the notice. Another person appointed by the District Right of Way Agent, 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 highest bidder. The District Right of Way Agent shall promptly forward the results of the auction, a copy of the receipt, a cashier's or certified check payable to the Department of Highways for all money received, and the recommendations of the District Office to the Right of Way Division Office.

5.4. Closing Sales of Real Property. -- If the sale is approved by the Division Right of Way Office and the Administrator of Highways, an executed deed shall be forwarded to the District Office for completion of the transaction. The District Right of Way Agent shall collect any balance of money due in the form of a cashier's or certified check prior to the delivery of the executed deed. Any monies so received shall be promptly forwarded to the Accounts Receivable Section, Finance Division, Division of Highways, with a copy of the transmittal letter to the Right of Way Division Office. The District Right of Way Agent shall advise the Division Right of Way Office in writing as to the recordation date of the deed, and the page and book number in which the deed is recorded in the appropriate County Clerk's office.

Section 5A Disposition of Former Railroad Rights-of-Way and Former Turnpike Roads.

5A.1. Authority. -- In any instance where the West Virginia Division of Highways has or shall hereafter acquire title to property which was formerly used as a railroad right-of-way, or which was formerly used and designated as a turnpike road, the Administrator may, subject to the conditions and procedures herein contained, transfer the same by sale on such terms and conditions, including consideration, as the Administrator shall determine to be fair and reasonable, in accordance with the following procedure.

(a) Upon written request by any interested party or on the Administrator's initiative, the Administrator shall determine and define those portions of any former railroad or turnpike properties owned by the Division of Highways which are not necessary or desirable for present or presently

foreseeable future state road purposes, and shall designate the same for the sale hereunder. If the Administrator determines that such property is not necessary or desirable for present or presently foreseeable future state road purposes, has no significant value to the state as a hiking trail and does not serve as a link between two or more state owned properties, its fair market value will be established by the Administrator and the abutting property owner will be permitted to purchase said property for the established price.

(b) For each particular former railroad or turnpike property designated for sale, the Administrator shall determine and establish (1) the fair market value for each such former railroad right-of-way or turnpike property designated for sale, and (2) the total square foot area of each former railroad right-of-way or turnpike property designated for sale.

(c) Any person or persons owning the entire surface interest or the entire interest in the fee, to a lot, parcel or tract of land abutting on a former railroad right-of-way property or property formerly used for turnpike roads and now owned by the West Virginia Division of Highways, may, subject to the conditions, restrictions and requirements hereinafter set forth, purchase portions of said property.

(d) A determination of the eligibility to purchase said property will be made following receipt of an application in writing from such owner(s) identifying the exact location of the property proposed to be purchased and the property owned by the abutting property owner. Evidence of such ownership shall include but not be limited to a certified statement indicating that the property does abut the railroad or turnpike roads together with copies of any deeds, wills, or other instruments conveying right or title unto such property.

(e) Any properties abutting such railroad or turnpike roads sold pursuant to these regulations shall embrace an area fronting the entire length of the abutting property owner's adjacent property and one-half the width of the former railroad right-of-way or turnpike road and terminate at both ends by lines perpendicular to the centerline or radially therefrom.

Section 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:

- (a) Retention by former owner as a part of the consideration of acquisition of the land; or
- (b) Public sale; or
- (c) Letting a demolition contract; or
- (d) Giving to a local public agency; or
- (e) Removal by Division of Highways maintenance forces; or
- (f) 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 Administrator of Highways, and if not so removed, the Administrator 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 as provided by law and these regulations. (Reference: Chapter 17, Article 2A, Section 19, Code.)

(a) Notice of Auction - The District Right of Way Agent shall cause a notice of the proposed sale of structures to be published during at least two different weeks in a newspaper of general circulation in the county in which the structures are located or as otherwise approved by the Director of the Right of Way Division. The first such notice shall be published at least 20 days prior to date of the proposed public auction.

(b) 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 Administrator of Highways reserves the right to reject any and 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.

(c) Proof of Publication - An affidavit of publication of the notice shall be obtained and filed with the Right of Way Division Office.

(d) Auction Procedure - At the time and place specified in the notice, the District Right of Way Agent, or a person designated by him, shall first advise prospective bidders concerning the terms under which the

improvements may be sold. Terms discussed include those concerning payment 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 District Right of Way Agent, 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.

(e) Recommendation of Approval - If time is of the essence, the District Office may request by telephone an advance indication as to whether the high bid will be acceptable and inform the bidder that contingent upon final approval of the bill of sale he may make arrangements to remove the improvement. However, actual work of removing the structure cannot begin until such final approval has been given by the Director of the Right of Way Division. If such advance notice is given the high bidder, he 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. The District Right of Way Agent shall immediately forward the bill of sale, results of the auction, and a copy of the receipt to the Division Office with the District Right of Way Agent's recommendations.

(f) Bill of Sale - The bill of sale, in quadruplicate, shall be completed and signed by the purchaser on the day of the auction for transmittal to the Division Office with the recommendations of the District Right of Way Agent.

(g) 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 the fully executed bill of sale (original), and shall obtain any balance due by certified or cashier's check and receive any required performance bond.

(h) Removal of Structures - All improvements shall be removed from the state right of way by the buyer, at his 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 so 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. Structures may be removed by demolition contract. Such contracts are subject to the provision of Chapter 17-2A, Series III entitled "Construction and Reconstruction of State Roads" of these regulations.

6.5. Removal of Structures From the Right of Way by Fire Department. -- Structures which have been offered for sale and on which there were not acceptable bids may be removed by local fire departments after approval of the Director or Assistant Director of the Division Right of Way Office.

6.6. Removal by Maintenance Force. -- Removal by maintenance forces may be made after bids have been taken and there is no acceptable bid. However, maintenance forces may make removal in other instances prior to the taking of bids upon prior approval by the Director of the Right of Way Division and when such removal by maintenance forces is deemed to be 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 so to do.

Section 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, shall be eligible to bid, either directly or indirectly on any real property or structure offered for sale by the Division of Highways.

Section 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 Chapter 17, Article 2A, Sections 19 and 19a of the Code. Such leases will be made in accordance with the following regulations.

8.2. Prior Approval. -- Prior approval of such lease must be obtained from the District Engineer and Administrator 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.

Division of Highways
Leg. Rule, 17-2A
Series II, Sec. 8.3

8.3. Appraisal. -- Rentals shall be based on a written approval and determination of fair rental value approved by the Chief Reviewing Appraiser for the Division of Highways.

8.4. Continuation of Existing Lease. -- When a property acquired by the Division of Highways is subject to an existing lease or tenancy, the District Right of Way Agent, with the approval of the Director of the Right of Way Division, may continue such existing lease at the existing rental, provided proper arrangements are made to vacate the property promptly, in advance of its need for highway construction.

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 Chief Appraiser, 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:

(a) The Chief Reviewing Appraiser shall establish the fair rental value.

(b) Each prospective tenant shall be required to execute a lease agreement which has been approved by the Legal Division.

(c) All rents shall be due and payable on the first day of each rental period.

(d) All lease agreements shall be in effect for an agreed term and may provide for termination upon thirty (3) days' written notice by either party.

(e) The Division shall make no repairs or alterations without written authorization from the Director of the Right of Way Division.

(f) The Division of Highways assumes no liability for any utility bills, sewer charges, or trash-disposal costs.

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

(h) No employee of the Division of Highways shall occupy Division of Highways property without authorization from the Administrator of Highways.

(i) The District Property Manager shall collect the first rental payments only. All future rents shall be paid directly by the tenant to the Accounts Receivable Section, Finance Division of the Division of Highways.

(j) 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.

Section 9. Rental of Property from other Persons

9.1. General. -- The Division of Highways may lease real property from other persons upon the recommendation in writing of the District Engineer and the Director of the Right of Way Division and with the approval of the Administrator of Highways. If the property to be rented is for use of a Headquarters Division, the approval of the District Engineer is not required. When so recommended and approved, the amount of the rental shall be approved in writing by the Chief Appraiser. (Reference: Chapter 17, Article 2A, Section 17, Code.)

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

Section 10. Damage by Owner or Occupant

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

10.2. Adjustment of Damages. -- If the owner or occupant does not pay for such damages, the Chief Reviewing Appraiser shall determine the value of the missing or damaged property and make appropriate adjustment in settlement price. If satisfactory adjustment is not made, the Legal Division shall take whatever action is necessary to protect the State's interests.

Section 11. Relocation Assistance

11.1. Incorporation of Federal Regulations. --

(a) Federal-Aid Highway Projects - By this legislative rule and pursuant to the authority of Chapter 17, Article 2A, Section 20, and of Chapter 54, Article 3, Section 3, of the Official Code of West Virginia, 1931, as amended, the West Virginia Division of Highways adopts as its own, the provisions, procedures and regulations promulgated by the Federal Highway Administration of the United States Department of Transportation, as the same appear in the Federal Register and are reproduced for convenient reference as Title 23, Part 740, in the Code of Federal Regulations, a copy of which title is submitted herewith.

(b) State Highway Projects - By this Legislative rule and pursuant to the authority of Chapter 17, Article 2A, Section 20, of the Official Code of West Virginia, 1931, as amended, the West Virginia Division of Highways adopts as its own, 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, as the same appear in the Federal Register and are reproduced for convenient reference as Title 23, Part 740, in the Code of Federal Regulations.

11.2. Forms. -- By this Procedural rule, the West Virginia Division of Highways adopts the hereinafter identified forms, a copy of each of which is attached hereto. The applicable form or forms must be signed by claimant or others, where appropriate, as a prerequisite to receiving the payment described therein. Forms RW 12.01B, RW 12.04, RW 12.04A, RW 12.04B, RW 12.04E, RW 12.06, RW 12.06B, RW 12.07, RW 12.07A, RW 12.07B, RW 12.13, RW 12.14A, RW 12.16, RW 13.11 and RW 13.12.