



A Tool Kit for Helping Businesses and Communities Survive Roadway Construction

Fact Sheet 1.6

The Right Of Way Process: If Some or All of Your Property Is Acquired by the State of New York

If some or all of your property was recently acquired by the State of New York for a construction project the following information will assist you to understand the policies and procedures of the New York State Department of Transportation. Information is also included about the process the State uses to acquire property.

An Agent from our local Office of Right of Way has likely already contacted you, but if you need to speak with someone about the recent acquisition, please feel free to call 716-847-3454 or write to our address shown below.

You may want to read about how our State acquires property. Information explaining the process along with answers to many frequently asked questions can be found below, as well as on our website.

If you are waiting for payment for our recent acquisition, it is likely in process or some document detail needs to be addressed. Again, feel free to contact our office as below or the specific Right of Way Agent who is handling your claim. He or she will be happy to check the status of your payment and help expedite it.

SIGNS

There are many local, state and federal regulations pertaining to signs. Most local governments have ordinances controlling the erection and removal of signs. Signs located on private property, which advertise the business located on the same property are considered “on-premise” and are only regulated by local government, if at all.

Signs which are placed on private property, but advertise businesses or activities on other properties are considered “off-premise” and may be regulated by all levels of government, local, state and federal.





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If you wish to make any changes to, additions to, or removals of, any signs, please be guided by the above and feel free to contact your local government and NYSDOT for further information and guidance.

Signs in the state's Right of Way are controlled by NYSDOT. Generally, these signs either help control traffic, guide motorists to destinations such as food, gas, lodging or camping, or are official signs that may inform motorists they are entering an area or municipality. No private signs are allowed in the Right of Way.

During construction, there may be some ability to allow for signs in the ROW to help guide motorists to your business. You must contact the EIC., Engineer-in-Charge of construction, if you wish to place a sign in the Right of Way during construction. He or she will help guide you to anyone else who may need to be involved.

If the state's recent purchase of Right of Way included purchasing your sign(s) or light pole(s) which were previously located on your private property, our Right of Way Agent will explain your options which may include keeping your sign(s) or pole(s), but you will be responsible to move it (them) and be required to agree to a lower compensation amount.

Use of Existing Right of Way

Some property owners who have had their business(es) located on state highways for many years may find that some features of their property such as signs, parking or land improvements, are encroaching onto state Right of Way. Such features may be removed by the state without compensation and uses such as parking may then be confined to land in private ownership. Sometimes this causes businesses to lose parking spaces and have their driveways narrowed. If your sign is to be removed, it will be kept safe for you, until you retrieve it, but it is advisable to have it removed yourself or retrieve it as soon as possible.

No one will be allowed to use state Right of Way without first obtaining written permission in the form of either a Use & Occupancy Permit or an actual sale of land by the state.

As above, if you have any questions, please feel free to contact the NYSDOT EIC, or our Regional Office of Right of Way at 716-847-3454. We will be happy to assist you.

FREQUENTLY ASKED QUESTIONS ABOUT HOW THE STATE ACQUIRES PROPERTY





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How Is Property Acquired By The State?

When it is necessary for the Department to acquire private property, a map is prepared which shows in detail the extent of right of way needed from each property. Title to the private property required is vested or transferred to the State when a copy of the map is filed in the office of the County Clerk for the county where the property is located. However, before any transfer of title takes place, you will receive a copy of the map, thorough explanation of the acquisition and a firm offer of compensation in writing.

Who Will Contact Me?

Probably the first person to contact you will be a representative of the local Office of Right of Way of the Department of Transportation who will give you preliminary information concerning the proposed acquisition.

To ensure that the visitors to your property are State representatives, it is advisable that you ask them to produce their identification cards or letters of authorization.

How Does The State Determine What I Will Receive For My Property?

The law requires the State to pay each property owner the fair market value which, generally, is the same amount of money that the sale of the property would bring under current market conditions. Value is determined as of the date the State acquires the property through an appraisal.

Who Will Appraise My Property?

This analysis is accomplished either by State employees, or consultants, who have received special training in this field and have had years of experience in evaluating real estate. These appraisers, through their research and analysis of the real estate market, are thoroughly familiar with property values of the area. Their job is to objectively determine the value of the property to be acquired and the legal damages, if any, caused by such appropriation.

Suppose My Remaining Property Is Damaged?

When only a portion of your property is required by the State, every attempt is made to ensure that you will suffer no financial loss due to decrease in value of the remainder of the property.

The acquisition of a portion of the property may, for example, leave the remainder in an irregular shape or too small to be used to its best advantage; or perhaps it may be isolated by the control of





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access to a highway. The State's payment to you will reflect loss of value resulting from these conditions as well as the value of the land actually acquired. If the appraisal of your property shows conclusively that the taking will leave an uneconomic remainder, the State will offer to purchase that remainder from you at the value assigned to it in the appraisal. You, of course, are not obliged to sell the remainder parcel.

Will I Have To Bear Any Of The Costs Of The Property Transactions?

No. Following your acceptance of the State's offer, the State will prepare all of the usual documents necessary for payment of the claim at no expense to you. You may, on the other hand, prefer to retain your own legal counsel or find it necessary due to title or other difficulties. The fee for this service would be your obligation.

How Will The State Arrange A Settlement With Me?

It is the State's policy to employ a "single offer" system. Under this system the amount offered by the representative of the Office of Right of Way is the full amount of the Department's approved appraisal. More complete information about settlement is available from our representatives or from our website.

Can I Receive Any Part Of The Value Of My Property If I Disagree With The State's Offer And Wish To Go To Court?

Yes. Where an agreement is not reached, an offer of advance payment is made whereby an owner receives the full amount of the State's approved appraisal. Under this arrangement, owners reserve the right to have their claim heard by the Court. Accepting such a payment does not prejudice the owner's case before the Court.

Suppose I Do Not Sign Any Agreement? What Happens To The Money I Was Offered?

If you refuse or fail to accept the State's written offer for full settlement of your claim or as an Advance Payment, the State may request the State Comptroller to deposit the amount offered in an interest bearing account, until such time as you decide to sign an Agreement or you are paid as directed by the Court of Claims through a distribution proceeding. There is no suspension of interest while your money is on deposit.

Depositing the amount of the State's offer does not prejudice your right to receive it, but it is considered to be the legal equivalent of a payment and allows the State's contractor to enter upon your property for construction even though you do not sign an Agreement.





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If I Finally Agree To Sign An Agreement Either In Full Settlement Or For An Advance Payment And The Money Is Deposited In A Special Interest Bearing Account, How Do I Finally Withdraw It?

You simply sign either Agreement, complete all the necessary closing papers and the money is automatically withdrawn from deposit with the accumulated interest and a check is mailed to you.

How Soon Will I Be Paid?

The state endeavors to make payment as rapidly as possible after an agreement is signed. In every case, we will try to make payment before the contractor has to enter upon your property. However, should title difficulties be encountered, payment might take longer. Also, if title difficulties are encountered, it may be necessary to request the State Comptroller to deposit the amount of your agreement in a special interest bearing account as referred to in the preceding question and answer. Our Office of Right of Way representative will explain this provision in greater detail for you.

The sooner a settlement is reached and all the necessary documents executed, the sooner the transaction can be processed and full payment made. The law provides that all settlements be checked and approved by the Attorney General and the State Comptroller. While this processing takes time, it is necessary to afford the fullest protection to the property owner, the State, and all other interested parties.

Will I Receive Interest On The Monies Due For The Property Acquired?

Yes. Provision has been made for accrual of legal interest from the date the State enters the property for construction purposes or the date on which the property is legally appropriated through the filing of a map in the county clerk's office - whichever is earlier. The interest will accrue under certain conditions until the date of payment, whether settled in full by agreement or taken to the Court of Claims for adjudication. If a property owner accepts the advance payment pending settlement of his claim, interest will be applied under specified conditions to any balance of the claim when final payment is made pursuant to negotiation or court award.

What About Liens, Mortgages Or Unpaid Taxes On My Property?

A title search at no expense to the property owner is made by the State on all properties acquired. Any outstanding liens, mortgages or unpaid taxes will have to be satisfied out of your settlement. At the time of payment, the State will draw separate checks for any such obligations and pay the balance to you.





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What About Property Taxes I Have Paid In Advance?

The State reimburses the owner the pro-rata portion of real property taxes, sewer rents and similar charges which became a lien on the property prior to the State's appropriation, but which cover a period following the appropriation. For example, if the State acquires the property six months after the beginning of the year for which taxes were paid, the State would return to the owner 50% of the tax payment made by the owner for the 12-month period.

Will I Receive Relocation Assistance?

Yes! All displaced occupants will be given personal help with finding comparable replacement properties. A Right-of-Way Agent will interview you before the acquisitions begin and provide a full explanation of our Relocation Assistance Program. Benefits are considerable, complex and best explained by a more comprehensive brochure or by one of our Right of Way Agents who can address your specific circumstances.

What If I Or My Tenants Continue Our Use Of The Property After The State Acquires Title?

After you are notified that title has vested we are required by law to collect a fair and reasonable rental from you or your tenants for the continued use and occupancy of the property until it is needed for project purposes. This is normally paid at regular intervals. However, if preferred, arrangements can be made with an owner-occupant to have the rental deducted from monies due from the State in payment for acquisition of the property.

What About My Income Taxes On Property Appropriated By The State?

Because property values are generally higher today than some years ago, there is a possibility there will be a capital gain from such transactions. However, under both Federal and New York State law, the acquisition of property by a governmental agency for public purposes is regarded as an "involuntary conversion." Such gains are not subject to tax, provided the money you receive is used to acquire similar property within a specified time. Additional information may be obtained from your own legal counsel or from the local office of the U.S. Internal Revenue Service and the New York State Department of Taxation and Finance.

