

POLICY ON NEGOTIATIONS

The negotiations of a local agency with a property owner for the acquisition of real property or any interest therein, except property of a kind specifically exempted below, shall be on the basis of offering the owner initially the full amount of the acquisition price determined by the local agency and concurred in by HUD to represent fair compensation for the property to be acquired. Negotiations exempted from the foregoing initial-offer policy must, of course, also be conducted fairly and impartially.

SCOPE AND APPLICABILITY

Programs affected.—The above-stated policy and the requirements set forth below shall govern the negotiations of local agencies with property owners for the acquisition of real property for the following RHA-assisted programs:

Low-rent public housing, urban renewal, urban parks (open-space land program), neighborhood facilities, and code enforcement.

Properties covered by the policy.—The policy and requirements apply to the local agency's negotiations with owners for the acquisition of all properties, except:

1. Property proposed for purchase from an owner who is under no compulsion to sell, i.e., where the local agency is not committed or required to acquire the property and will buy the property only if it can do so at an acceptable price and on an acceptable basis without resorting to a trial of the issue of value or compensation in an eminent domain proceeding.

2. Property owned by the Federal Government, a State or local government, or an instrumentality thereof.

3. Property donated to the project.

4. Property of an owner who voluntarily and knowingly offers to sell his property to the project for less than its fair market value and executes a statement to that effect.

5. Any property for which the HUD concurred-in acquisition price is more than \$100,000.

6. Any specifically identified property or interest in real property, regardless of its value, of such an unusual character that the local agency finds, with HUD Regional Office concurrence, that the fair compensation for the property should be determined by negotiating the basis of compensation and the amount thereof without first making a firm initial offer to the owner. Examples of the kinds of property and property interests for which such a finding may be appropriate are cemeteries, railroad operating properties, utility easements, limited interests and servitudes in land, and special-purpose industrial plants and similar properties involving complicated or controversial determinations of what is a fixture, i.e., realty, and what is personalty.

BASIS FOR POLICY

The foregoing policy accepts as valid for RHA-assisted projects the principle that the owner of a property to be taken for a public purpose generally should not be forced to bargain with a local agency to obtain an offer of the full amount determined by the local agency, with HUD concurrence, to represent the fair compensation for his property. The policy thus recognizes that a public entity armed with the power of eminent domain has a public duty, in its negotiations with owners, not only to protect the public interest, but also to safeguard the rights and interests of the owners.

The local agency's real estate representative, accordingly, must recognize that the central purpose of his negotiations of purchase prices should be to induce each owner to sell his property to the local agency at a price that represents the compensation that the owner would be entitled under eminent domain law to receive and the local agency would be obligated under such law to pay. With that objective in mind, negotiations will be conducted as they should be—from the viewpoint of seeking agreements as to fair compensation, rather than as a bargaining procedure that pits the power of the public body against the negotiating ability of the owner.

The policy has not been made applicable to negotiations for the purchase of properties in situations where the owner is under no compulsion to sell because in such cases the owner is under no pressure or threat of condemnation action and is entirely free to sell or not to sell as he pleases. If he chooses to sell, he does so voluntarily and needs no more protection than a seller of property in a private sale.