

# UNIFORM RELOCATION ACT FROM A HISTORICAL PERSPECTIVE



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The fundamental principle of just compensation is that property owners should be placed in as good of a position as if the condemnation had not occurred. Unfortunately, that is not always the case, even if the property owners are compensated for the fair market value of their real property. For example, condemned property owners are usually not entitled to compensation for going concern value. As relevant here, condemned property owners—assuming they do not shut down their businesses—are forced to relocate, which can be an overwhelming burden. In this article, we review the development and application of federally-mandated payments for relocation expenses.

As a general matter, absent legislation authorizing such payments, the Constitution does not require as part of “just compensation” the costs of moving personal property. For example, in 1945, the Supreme Court noted that “compensation for [property] interest[s] does not include ... the expense of moving removable fixtures and personal property from the premises.”<sup>1</sup>

The theory behind this rule was that “the loss incurred [in relocating] is not a taking, even though incurring such moving costs may result in substantial hardship to the owner.”<sup>2</sup> Additionally, courts

regarded relocation costs as too speculative and hypothetical to be compensable, ignoring that moving expenses can often be ascertained with far more certainty than other factors courts deemed compensable, such as the potential use of the condemned property. As one can imagine, this rule left many residential and commercial property owners in a precarious position.

Over time, several states and the federal government began expanding the scope of payments available for relocation expenses. To understand the impetus for this development, one has to consider the historical context. By today’s standards, early American life was rural, and property was far less valuable. Condemnation was also far less common, because “[t]here were vast tracts available in the public domain and the governmental activities were limited.”<sup>3</sup> When the government did condemn property, it typically did not result in significant moving expenses.<sup>4</sup> As an extreme example, in the South, courts often ruled that there was no duty to compensate property owners “at all for unimproved land” because “[i]ts value ... was said to be so small that its taking was not considered to be a damage.”<sup>5</sup>

By the twentieth century, society had urbanized. And with the New Deal, the government began taking

on hundreds of major programs that required eminent domain. Those included urban renewal, blight clearance, and construction of highways and public housing. During this period, courts refrained from constraining the government's eminent domain powers, even if that meant favoring the government at the expense of property owners by limiting just compensation.

The government's highway plans following World War II—initiated in response to Germany's construction of a transit system to support its military in the 1930s—expedited this process further. During the Eisenhower administration, almost every state had dozens of lawyers working full time on eminent domain cases related to blight clearance and highway construction.

During this period, some states started paying condemned property owners for more expenses. States typically did this through legislation that authorized courts to include relocation costs in condemnation awards.<sup>6</sup> As of the mid-1960s, however, most of these state statutes "had serious quantitative limitations that [we]re not realistic in light of the actual expenses of moving personal property."<sup>7</sup>

Around this time, studies began to show the negative consequences inherent in refusing payments for relocation expenses.<sup>8</sup> In a 1964 speech, President Lyndon B. Johnson acknowledged that "for some, the inconvenience of displacement" for urban renewal projects "has meant only another slum dwelling and the likelihood of repeating this experience."<sup>9</sup> He likewise recognized that "small businessmen—especially those in leased premises—often incur[red] economic loss and hardship as a result of displacement by urban renewal or public housing which is not offset by current compensation practices and moving expense reimbursements."<sup>10</sup> In Congress's "Declaration of findings and policy" to the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (URA), it accounted for similar concerns, stating that "the displacement of businesses often results in their closure" and "minimizing the adverse impact of displacement is

essential to maintaining the economic and social well-being of communities."<sup>11</sup>

The insufficient payments for relocation expenses struck at people living in condemned residences. Most urban renewal projects operated in blighted areas with substandard housing. Unsurprisingly, many of the residents in these areas lacked the financial and social means to relocate absent additional compensation.<sup>12</sup> Moreover, many of these impoverished residents were tenants at will and received no compensation in takings cases, even though they often incurred devastating moving expenses.<sup>13</sup> To make matters worse, the government failed to build sufficient housing on condemned land, leaving a shortage of safe potential residences for displaced tenants and homeowners. "As of 1965, 202,500 families had been relocated [under federal urban renewal programs], yet only 84,000 housing units had been constructed on renewal sites."<sup>14</sup>

There was also a glaring lack of uniformity, which "provide[d] irritation and confusion in the communities affected."<sup>15</sup> "Throughout the debates and hearings on the [URA], ... advocates of the bill decried instances ... in which families whose homes were acquired by the federal government pursuant to a plan to build a highway received assistance, while ... families one block away whose homes were acquired by the government for the construction of a post office building received none."<sup>16</sup>

By 1970, the national perception of this issue had moved substantially. People were concerned with the inequities inherent in urban renewal projects, and they believed that the compensation process inadequately protected the predominantly poor tenants and decimated small businesses. Following several states' legislative initiatives, the federal government targeted this issue with legislation, most importantly, the URA.<sup>17</sup> The URA was not without its flaws—and it has been amended several times since—but it made substantial progress towards truly making condemnees whole.

As part of our eminent domain practice—and especially in the past handful of years—we have assisted

in the relocation of several manufacturing and distribution businesses. While working on relocation issues, we have picked up a few useful points.

At its absolute core, the URA provides compensation to individuals and businesses displaced in the course of federally funded projects.<sup>18</sup> More specifically, “[w]henever a program or project to be undertaken by a displacing agency will result in the displacement of any person, the head of the displacing agency shall provide for the payment to the displaced person of”:

- (1) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;
- (2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property as determined by the head of the agency;
- (3) actual reasonable expenses in searching for a replacement business or farm; and
- (4) actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new site, but not to exceed \$25,000, as adjusted by regulation....<sup>19</sup>

Here are a few thoughts and suggestions on discrete topics related to the URA:

### **Replacement property search and attorneys’ fees**

As a disclaimer, jurisdictions vary in their application of the Code of Federal Regulations. Under the applicable regulation, displaced parties are entitled to \$2,500 for attorney fees utilized in purchasing the replacement property.<sup>20</sup> These search fees are premised upon the owner spending \$2,500 worth of time searching for a new site. A diary is required showing the time and the hourly rate. Although the fee for assisting in searching for a new location is categorized as a relocation cost, many local agencies—including our own—apply the \$2,500 limit to

separately delineated attorney fees. In other words, if an attorney spends \$2,500 worth of time in the closing of the purchase of the relocation site, the local authority will not also pay the search fee.

### **Business reestablishment expenses**

In addition to other available grants, businesses are entitled to spend up to \$25,000 upgrading their replacement buildings.<sup>21</sup> This payment is in addition to the agency’s payment for relocating other personal property.

### **Agency discretion**

Agencies have a great deal of discretion with several relocation topics. For example, agencies have some discretion to determine which building improvements are necessary to protect the personal property being moved. In the current market, opportunities to move are often limited. Where the only recourse to protect personal property is to make substantial modifications to the replacement building, the agency may include such costs in the grant process, even though they exceed the above-stated \$25,000 limitation. Given that local agencies have tremendous—though not completely unfettered—power over URA benefits, it is important to establish an amicable working relationship with them. The appeal process provides little path to relief. First, you appeal to a person appointed by the same agency, who will have to determine whether the original agent abused his or her discretion.<sup>22</sup> Only after the final agency decision can an owner initiate an appeal through the judicial process. These cases involve federal money, so the appeal can typically be made in either state or federal court. This process, however, is often long, arduous, and unsuccessful given the deference provided to the agency’s decision.<sup>23</sup>

### **Payments prior to expenditure**

Under certain circumstances, displaced parties are entitled to payment prior to their expenditures on relocation. Under the relevant regulation, “If a person demonstrates the need for an advanced relocation payment in order to avoid or reduce a hardship,

the Agency shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.”<sup>24</sup> The same provision delineates the timing for submitting claims for agency review. 🍀

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## Notes

- 1 *United States v. Gen. Motors Corp.*, 323 U.S. 373, 379 (1945). See also, *Metro. W. Side Elevated R. Co. v. Siegel*, 44 N.E. 276, 279–80 (Ill. 1896) (“[M]any authorities are cited to support the proposition, that no damages can in such cases be allowed for injury to or loss of business, expense of removal of personal property from the premises condemned, or injuries to such property unavoidably caused by such removal.”); Peter M. de Petra, *Compensation for Moving Expenses of Personal Property in Eminent Domain Proceedings*, 20 *Hastings L.J.* 749 (1968), available at [https://repository.uchastings.edu/hastings\\_law\\_journal/vol20/iss2/13](https://repository.uchastings.edu/hastings_law_journal/vol20/iss2/13) (“The rule that the owner of condemned property is not entitled to compensation for the cost of moving personal property from premises that have been condemned has been repeatedly sustained by the overwhelming majority of the cases involving eminent domain proceedings.”).
- 2 Petra, *supra* note 1, at 749.
- 3 See *The Public Use Limitation on Eminent Domain: An Advance Requiem*, Comment, 58 *Yale L.J.* 599, 600 (1949).
- 4 *Id.* Cf. H. Rep. No. 91-1656, 91st Cong., 2d Sess. 1 (1970), as reprinted in 1970 U.S.C.C.A.N. 5850, 5850–51 (“In a less complex time, federal and federally assisted public works projects seldom involved major displacements of people. There was relatively little taking of residential or commercial property.... However, with the growth and development of an economy which is increasingly urban and metropolitan, the demand for public facilities and services has increasingly centered on such urban areas, and the acquisition of land for such projects has become the most difficult facet of many undertakings by public agencies.”).
- 5 Petra, *supra* note 1 at 750.
- 6 *Id.* at 757.
- 7 *Id.* at 758. In a few outlier states, including Connecticut and Florida, the judiciary acted on its own and authorized payments for relocation expenses. See *id.* at 758–59.
- 8 See, e.g., *Advisory Commission on Intergovernmental Relations, Relocation: Unequal Treatment of People and Businesses Displaced by Governments* (Jan. 1965), available at <https://library.unt.edu/gpo/acir/Reports/policy/a-26.pdf> (describing relocation as “the ‘Achilles heel’ and the ‘hot potato’ of urban renewal” and proposing reforms).
- 9 Lyndon B. Johnson, *Special Message to the Congress on Housing and Community Development* (Jan. 27, 1964), available at <http://www.presidency.ucsb.edu/documents/special-message-the-congress-housing-and-community-development-0>.
- 10 *Id.*
- 11 See 42 U.S.C. § 4621(a).
- 12 See Terry J. Tondro, *Urban Renewal Relocation: Problems in Enforcement of Conditions on Federal Grants to Local Agencies*, 117 *U. Pa. L. Rev.* 183, 184 (1968).
- 13 See Stephen I. Adler & Roy B. Brandys, *Relocation Primer: Available Benefits and Compensation*, ALI CLE Course Materials (Jan. 23–25, 2014) (“Under traditional concepts of eminent domain, a homeowner would receive only the market value of his condemned house. A significant concern was that a tenant at will, residing or doing business at condemned premises, received nothing. Yet both would incur significant, perhaps devastating, expenses in moving personal property. The [URA] was intended to alleviate the ‘disproportionate injuries’ suffered by such persons.”).
- 14 Tondro, *supra* note 12, at 191; H.R. Doc. No. 91-34, pt. 2, at 82–83 (1968) (finding that between 1949 and 1968, urban renewal programs decreased the number of available low-income housing units).
- 15 S. Rep. No. 488, 91st Cong., 1st Sess. 7 (1969).
- 16 Margaret Barbier & Shireen Avis Fisher, *The Uniform Relocation Act: A Viable Solution to the Plight of the Displaced*, 25 *Cath. U. L. Rev.* 552, 553–54 (1976).
- 17 Although the URA was the most impactful legislation for relocation benefits, it was not the first. For instance, Congress had previously attempted to combat the displacement of communities during condemnation actions in its 1969 amendments to the Housing Act, 42 U.S.C. § 1455(h), and by enacting the Highway Relocation Assistance Act, Pub. L. No. 91-605, 84 Stat. 1724.
- 18 See 42 U.S.C. § 4601, et seq.
- 19 42 U.S.C. § 4622(a)(1)–(4).
- 20 49 C.F.R. § 24.301(g).
- 21 See 42 U.S.C. § 4622(a)(4) (providing for “payment to the displaced person of ... actual reasonable expenses necessary to reestablish a ... business at its new site”).
- 22 See 49 C.F.R. § 24.10.
- 23 See, e.g., *Supreme Oil Co. v. MTA*, 157 F.3d 148, 151 (2d Cir. 1998) (“Review of an administrative agency’s denial of URA relocation benefits is under this narrow arbitrary, capricious, ... abuse of discretion standard.” (internal quotation marks omitted)).
- 24 49 C.F.R. § 24.207(c).