

835-RICR-30-00-2

TITLE 835 – NARRAGANSETT BAY COMMISSION

CHAPTER 30 – PURCHASING AND ACQUISITIONS

SUBCHAPTER 00 - N/A

PART 2 – Rules for the Acquisition of Property or Rights

2.1 Purpose

To establish a defined procedure for the Narragansett Bay Commission (hereinafter called the “Commission”) for the acquisition of property or rights.

2.2 Authority

This regulation is promulgated pursuant to the authority granted in R.I. Gen. Laws §§ 46-25-1 *et seq.* and 37-6-1 *et seq.*

2.3 Appraisals

The Commission's Appraiser shall prepare and submit to the Commission separate Appraisals for each parcel of property that will be affected by the Project.

2.4 Project Approval from State Properties Committee

- A. Any Project that involves the condemnation of property must be approved by the State Properties Committee before the initiation of negotiations.
- B. Approval Procedure
 - 1. When approved appraisals have been received that establish the fair market value for each parcel that is affected, a request shall be sent to the State Properties Committee seeking approval to acquire the property by eminent domain and for approval of each individual claim. The request shall be made in accordance with the Rhode Island Department of Administration's "Rules and Regulations of the State Properties Committee," 600-RICR-00-00-1.

2.5 Negotiation with Property Owners

- A. Notification of Property Owner: After the appraisals have been completed and approval has been received from the State Properties Committee, every reasonable effort shall be made to contact personally each property owner. This will be done by sending a letter to each owner advising them generally about the project and requesting that they meet with a representative of the Commission to discuss the matter in detail. All correspondence by the Commission to property owner(s) shall be sent by certified mail, return receipt requested. If contact by mail is unsuccessful, then other reasonable alternative methods may be used to contact each property owner.
- B. First Meeting with Property Owner: During the first meeting, the property owner(s) shall be provided with the following information:
1. Explanation of the "One Offer System": At the first meeting, the Commission will make its initial Compensation Award offer to the property owner in writing for the full amount of the approved fair market value of the property, interest or right to be taken. This will ensure the equitable treatment of all property owner(s).
 2. Statement of Just Compensation: The full approved amount of just compensation must be presented in writing by the Commission's representative. In addition to delineating the fair market value established, it also shall delineate separately any damages assigned to the remaining property as a result.
 3. Letter of Rights: The Commission's representative will present a letter of rights explaining a property owner's rights, privileges, and options. He/she will also explain the following options to the property owners:
 - a. Full Release
 - b. Advance Payment Release
 - c. Escrow Deposit into the Registry of the Rhode Island Superior Court.
 4. Plat Map or Other Description of Land to be Affected: The property owner will be provided with a plat map and/or other legal description and a map of the owner's land area(s) that is/are affected.
 5. Revised Offer: In the event that a revised offer must be made to the property owner, this revised offer will be made in writing by a Revised Statement of Just Compensation.

- C. **Additional Meetings with Property Owners:** In most cases, additional meetings are necessary to obtain the property owner's decision regarding the acceptance of the just compensation established.
- D. **Negotiating with an Attorney:** When a property owner informs the Commission that he/she will be represented by an attorney or authorized representative, the Commission will request a letter of representation from either the property owner, his attorney, or his/her authorized representative stating they will be the exclusive agent during the acquisition process. The Commission will then deal solely with the authorized representative.
- E. **Tenant Owned Improvements:** If the Commission must acquire any tenant owned improvements, the tenant(s) shall receive the same rights and privileges as that of a real property owner. If a lease is in existence, it must be thoroughly reviewed. In order for the tenant to receive direct payment, the real property owner must sign a disclaimer. If the property owner refuses to sign this disclaimer, one hundred (100%) percent of the amount established as just compensation for the tenant owned improvement shall be deposited in the Registry of the Superior Court in an escrow account under both the owner and the tenant's name.

2.6 Settlement Procedures (Completion of Negotiations)

- A. When negotiations are successfully completed, a written agreement must be prepared to the effect that this agreement embodies all consideration agreed upon between the Commission and the property owner(s). This written statement will take the form of a Release.
 - 1. **Full Release:** When an offer is accepted by a property owner as full and just compensation, a Full Release must be signed by the property owner witnessed by a third party and dated. In doing so, the property owner received payment of 100% of the offer of just compensation and releases all rights to file a petition in court for the assessment of damages.
 - 2. **Advance Payment Release:** When an offer is not accepted by a property owner as full and just compensation, the property owner may choose to sign an Advance Payment Release. The signature(s) must be witnessed by a third party. In doing so, the property owner receives payment of 100% of the offer of just compensation and retains the right to petition the court for assessment of damages with one (1) year from the date of condemnation.
- B. **Corporately Owned Property:** When property to be acquired is held in title of a corporation, the Commission will require a letter of corporate authority from the

property owner. This letter shall verify the fact that the officer executing the release is a duly authorized officer of the corporation and is the party authorized by the corporation to execute the release form.

- C. Vouchering: Upon receipt of the executed full or advance release form, the Commission shall prepare a voucher for payment to the property owner.
- D. Escrow (Registry of the R.I. Superior Court): In the event the property owner does not wish to sign either an Advance Payment Release or a Full Release, 100% of the offer of just compensation will be deposited in the registry of the Rhode Island Superior Court for their benefit. It shall be held by the Court in an escrow account while compounding interest. The property owner retains the right to petition the Court for assessment of damages within one (1) year from the date of condemnation.
 - 1. Escrow Procedures: The payment shall be vouchered in the name of the "Registry of the Superior Court or the property owner." The property owner may execute a Full or Advance Payment Release at any time prior to the deposit of the just compensation in the Registry of the Rhode Island Superior Court.

2.7 Mortgage and Lien Holders

- A. If there are any outstanding mortgages, liens, or encumbrances, the Commission shall contact each party and inquire if they desire any consideration in the settlement.
 - 1. If the mortgage or lien holder does desire consideration, it must be deducted from the amount of consideration being paid to the property owner on either the Full or the Advance Payment Release. An authorized representative of the mortgagee or lien holder must execute the release and have his/her signature witnessed by a third party. Separate payment checks for the owner and each lien holder desiring consideration will then be processed.
 - 2. If a mortgage or lien holder does not require any consideration from the settlement, it must be documented on the Full or Advance Payment Release. An authorized representative of the mortgagee or lien holder is required to sign the release or other document indicating that they do not desire any consideration.

2.8 Administrative Settlements

- A. Definition: An administrative settlement is any settlement made and authorized by the Board of Commissioners or its designee(s) of the Narragansett Bay Commission that is in excess of the original statement of just compensation.
- B. An administrative settlement may be approved when reasonable efforts to negotiate an agreement at the amount offered as just compensation have failed and the Board of Commissioners or its designee(s) approves such administrative settlement as being reasonable, prudent, and in the public interest. A written justification shall be prepared, which indicates that available information (e.g. appraisals, recent court awards for similar type property, estimated trial costs, or valuation problems) supports such a settlement.
- C. Administrative Settlements (Approval Procedure): When the State Properties Committee has approved the settlement, the Commission will prepare the offer and have a Full Release executed by the property owner(s).

2.9 Condemnation Plats Filing Procedures

The procedures set forth in R.I. Gen. Laws § 37-6-1 *et seq.* shall be followed.

2.10 Voluntary Transfers

Nothing herein shall preclude the Commission from acquiring property or rights in property by voluntary transferor purchase or use agreements.

2.11 Payment Procedures

- A. Upon receipt of check by the Commission, the check should be hand-delivered (whenever possible) by a representative of the Commission. No checks shall be delivered to the property owner or filed with the Registry of the Superior Court until the condemnation is filed with the local city clerk.
- B. Check Receipt: The property owner or authorized agent will be required to sign a form acknowledging receipt of the check.
- C. Delivery by Mail: If it is not possible for the payment check to be hand-delivered, it may be delivered by certified mail, return receipt requested.

2.12 Right of Entry During Design or Construction

- A. Applicability: All owners of lands, waters, or premises that may be the subject of NBC design construction projects must, upon notification and payment in accordance with §§ 2.12(B) and (C) of this Part below, allow NBC authorized

agents and employees to enter upon their private properties for the purposes of making surveys, soundings, test pits, drillings, borings, and examinations in accordance with R.I. Gen. Laws § 46-25-24.1.

- B. Notice: The Commission shall provide the owner/s with written notification of its intent to enter upon such property at least fifteen (15) days prior to initial entry. Said notice shall include the amount of compensation the Commission proposes to pay to the owner as just compensation for entry.
- C. Compensation: In accordance with public rule-making procedures as provided for by R.I. Gen. Laws § 42-35-1 *et seq.*, the Commission has set just compensation for entrance upon private lands for the purposes of making surveys, soundings, test pits, drillings, borings, and examinations at \$50 for the right of entry and \$100 per boring or test pit.
- D. Restoration/Damages: Within a reasonable time after entry, the Commission shall restore the property to its prior condition or reimburse the owner for any actual damage resulting to such lands, waters, and premises as a result of such activities, at the Commission's discretion.
- E. Appeal: Any appeal with regard to just compensation shall be made to the Rhode Island Superior Court.

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Editorial Note: This Part was filed with the Department of State prior to the launch of the Rhode Island Code of Regulations. As a result, this digital copy is presented solely as a reference tool. To obtain a certified copy of this Part, contact the Administrative Records Office at (401) 222-2473.