

RIGHT-OF-WAY

FREQUENTLY ASKED QUESTIONS

Q. What is right-of-way and how do I know how wide it is?

A. Right-of-Way is the term used to describe "right of passage" over another's land. When the Commonwealth acquires land for transportation purposes, it is actually obtaining a "right of passage" over the land on which a public road ultimately will be built. It is a Constitutional right of the Commonwealth to acquire land for public purposes. The term used to describe this right is "Eminent Domain". Eminent Domain states that it is the inherent right of the State to acquire land when it is needed for public use. The Pennsylvania Department of Transportation will execute this right only when it will benefit the public. Right-of-way includes the easement or land purchased by PennDOT on which a highway is built, as well as the shoulder or berm, plus any additional area needed for highway purposes such as drainage, slopes, etc. While the right-of-way is often 33 feet wide, it may be much wider (120 feet or more in some cases), since it extends beyond the paved road and shoulders. Contact the PennDOT District office to find out what the right-of-way width is for a specific location.

Q. What is an encroachment? A. An encroachment is any object placed without permission within the legal limits of a highway right-of-way. Some examples include signs, fences, walls, and lights. Objects generally are not permitted in the right-of-way unless the objects serve an official highway purpose (utility poles and properly placed mailboxes are exceptions).

Q. What is PennDOT's responsibility in regard to right-of-way encroachments?

A. PennDOT provides the owner of an encroachment with a written request for its removal. If the encroachment is not removed, PennDOT is authorized to remove it and to collect removal costs from the owner. Also, the state highway law provides a penalty for encroachment violations, upon summary conviction.

Q. How is highway location determined?

A. It is PennDOT's goal to establish the most direct and useable highway facility at the least possible cost to the public. To accomplish this, PennDOT undertakes intensive studies on several possible routes in order to find the route that will result in the least possible inconvenience or injury to the public and the private landowner. Statistical data concerning the economy, population needs and traffic volume trends are analyzed for the area under study. Aerial and ground surveys are taken, and consideration is also given to such factors as safety, drainage and soil types. On larger projects, public meetings are generally held to discuss the proposed alternate locations of the transportation improvement.

Q. How will my rights be protected during property acquisition?

A. According to Article V of the U.S. Constitution, no person shall be deprived of life, liberty or property without due process of law, nor shall private property be taken for public use without Just Compensation. In this situation, it is your right to receive Just Compensation in exchange for your property. A current Market Value will be determined for your property, and you will receive this along with several other benefits as Just Compensation. Pennsylvania's Eminent Domain Legislation is considered the most liberal of its kind in the United States. Your rights as a property owner are given primary consideration.

Q. If my property is to be acquired by the Commonwealth, who will contact me?

A. You will be contacted several times throughout the acquisition process and your cooperation is necessary to aid in the success of the process. Your first contact will usually be a letter informing you that your property will be affected by a highway project. You will also be personally assigned a Real Estate Specialist to answer any questions you may have and/or explain all of the benefits to which you may be entitled. All appointments will be made at your convenience within reason of course. It is our desire to make this process run as smoothly as possible.

Q. Who determines property value?

A. The value of your property will be determined by a State Certified Appraiser. This Appraiser may be a PennDOT Staff Appraiser or an independent State Certified Fee Appraiser. Local real estate trends and the value of comparable properties will be taken into consideration when determining the Market Value of your property. All appraisals are reviewed by State Certified Review Appraisers to assure that you will receive just compensation for your property. In addition to any offer to purchase, all claimants are entitled up to \$500 to obtain the services of an appraiser, engineer or attorney to evaluate your claim.

Q. What will I be paid for my property?

A. If your entire property is needed for a highway project, you will be offered its current Market Value, determined by the appraisal process, as Just Compensation. If only a portion of your property is needed, you will be offered the difference between the value of the whole property and the value of the part remaining.

1. In addition to the Market Value for your property, you are also entitled to the following benefits:

- a. All fees incidental to the transfer of your property to the Department;
- b. Any mortgage prepayment penalty you would be required to pay as a result of the acquisition;
- c. A maximum of \$500.00 for any reasonable expense incurred for an appraiser, engineer or attorney to evaluate your property;
- d. Should the acquisition cause you to be dislocated from your residence or business, you will also be entitled to Relocation Benefits. These benefits are further explained in Bulletin #47. A Right-of-Way Representative will also be available to inform you of your eligibility for any other benefits.

Q. When will I receive the offer?

A. A Right-of-Way Representative will personally present you with a written offer for your property. PennDOT operates under a written, one-offer policy in order to achieve uniformity throughout the project. Each owner is treated on the same basis, and each claim is settled on its own merits rather than on the negotiating ability of the parties. You will be offered the amount determined by the appraisal process. The Pennsylvania Department of Transportation cannot, by law or by our policy, offer you less than Estimated Just Compensation for your property. If you do not believe that the Department's offer represents "Just Compensation", and if you can provide factual information pertaining to the value or damage to the portion of your property that is being taken and which was not considered in the appraisal, PennDOT Officials will gladly review your Appraisal.

Q. Must I accept PennDOT's offer?

A. The vast majority of property acquisitions are settled on an amicable basis. Keep in mind, a careful procedure is used to arrive at a Market Value for your property that is required for the transportation improvement. If, however, an agreement cannot be reached through negotiations, PennDOT, in order to proceed with the project, will file a "Condemnation Proceeding" (i.e., Declaration of Taking) in the Court of Common Pleas. At the point of condemnation, you will once again be offered the full amount of the appraised Market Value of that portion of your property that was required for the transportation improvement as Estimated Just Compensation. You may elect to accept the Estimated Just Compensation without jeopardizing your right to contest the amount in court, or you can refuse the payment and it will be deposited in your name with the Prothonotary of the County in which the property is located. Once a Declaration of Taking has been filed, either you or PennDOT may petition the Court, within five years from the date of payment or the date of deposit, for a Board of Viewers, to determine the Market Value of the property that was required for the transportation improvement. Lacking any legal actions by either party will be considered payment in full to you, in accordance with the Statute of Limitations. At a Board of View, the Viewers will consider your testimony, as well as those of the Department of Transportation. An award will be made by the Board of Viewers based on the

available information. If either party is still dissatisfied, an appeal may be made to the Court of Common Pleas. Under most circumstances, however, this procedure is not necessary.

Q. When will I be paid for my property?

A. For your convenience payments will be processed as quickly as possible. Before you receive payment, however, you are responsible for providing the Commonwealth with a clear and marketable title. Any liens, mortgages, judgments, taxes or other obligations with regard to your property must be satisfied either prior to, or at the time of settlement with the Department. Once an agreement has been reached, payment can be expected within four to six weeks. No property owner will be required to move until he or she has received payment of Just Compensation or until it has been made available to you by depositing the offered amount into Court. PennDOT will forward all payments as quickly as possible to aid you with your relocation process.

Q. How can I get more information about right-of-way encroachments and control of outdoor advertising signs?

A. Contact the Right of Way Unit for PennDOT Engineering District 11-0 if your property is in Allegheny, Beaver or Lawrence Counties. (412) 429-4853.