



Guide to Compulsory Purchase and Compensation under The Roads Law (2005 Revision)

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GUIDE TO COMPULSORY PURCHASE AND COMPENSATION UNDER THE ROADS LAW (2005 REVISION)

The Roads Law (2005 Revision) lays down the framework for compulsory purchase in respect of road schemes and the basis on which compensation is claimed, assessed and paid.

Section 3 Notice

The trigger is a Section 3 notice (Boundary Plan) indicating an **intention** to acquire a portion of land for a new public road or the widening of an existing road.

The Notice must state the affected parcels and be:-

- (a) Published in the Cayman Islands Gazette,
- (b) Published twice per week for three consecutive weeks in a daily newspaper published and circulating in the Islands; and
- (c) Sent to the registered owner by registered post

The Section 3 notice sets the valuation date and gives any person having an interest in the affected land, the right to make a claim for compensation.

Notice of intention to claim (Form A)

The affected owner must submit to the Valuation and Estates Office (VEO) a Notice of intention to claim (Form A) within 90 days from the day the Section 3 Notice is published in the Cayman Islands Gazette (declared day). The VEO act as agents for the NRA.

Section 6 Notice

If the Governor is satisfied that the proposed scheme is in the public interest, he shall issue a Notice giving the National Roads Authority (NRA) the power to take the land on the expiration of 15 days from the publication of this notice.

Claim for compensation (Form B)

Once a Section 6 notice has been published and the NRA have taken possession of the land, the owner has the right to claim compensation and Form B must be completed and sent back to VEO no later than one year after the publication of the Section 5.

Any notice of intention to claim (Form A) and/or claim for compensation (Form B) submitted after the deadline may not be accepted.

The NRA may accept the late claims if it is satisfied that the delay in submission of the forms was a result of illness, absence from the Islands and other good causes.

Section 5 Notice

This gives the NRA the power to define a scheme as a public road.

The Prescribed Composite Map (PCM) which defines the road is the final survey and the actual area acquired from the property is stated. It distinguishes between roads as proposed and roads as actually built. It forms the basis of the final compensation payment under a two stage assessment and no claim can be made one year after the PCM is published.

Assessment of compensation

Compensation following a compulsory acquisition of land is based on the principle of equivalence. This means that the claimant should be no worse/better off in financial terms after the acquisition compared to before the compulsory acquisition.

Section 11 allows the claimant to have the claim assessed in two ways:-

The **one-stage assessment** means that the compensation will be based on the assumption that the road will be built as proposed. Payment of the agreed compensation will be in full and final settlement of the claim.

Under a **two stage assessment**, compensation will initially be assessed on the assumption that the road will be built as proposed and an interim payment not exceeding 75% of the total amount assessed will be made.

The final compensation will be assessed when the Section 5 notice is published. It will be based on the difference between the proposed area of the land taken as stated in the Section 3 Notice and the actual amount as stated in the Section 5 Notice.

Please note that the NRA has the right to recover any overpayment. Also, an election once made, shall be irrevocable.

Heads of Claim

Compensation can be claimed under the following categories:-

- (a) **Land Taken** – based on the Market Value of the land acquired at the date of the Section 3 notice.

- (B) **Trees & Crops** - Damage sustained to any standing crops or trees at the time of taking possession of the land. The value of any crops destroyed will be required from a Horticulturalist to support this claim.
- (C) **Severance** – this refers to the depreciation in the value of the retained land as a result of severing the property. For example, the land acquired may result in the retained land becoming too small to be developed.
- (d) **Injurious Affection** – relates to any damage as a result of the loss injuriously affecting the retained land. For example, a property may reduce in value due to the use of the road.
- (e) **Disturbance** - Reasonable expense due to relocation of a residence and business. This claim is for the cost relating to acquiring a new home or business premises if the entire property is acquired. It will include the agents' fees relating to the acquisition of a new property, stamp duty on the new acquisition, the cost of moving, printing stationery, change phone lines etc.
- (F) **Loss of Profits** -Damage resulting in the profit reduction between the date of the Section 3 notice and time of taking possession.
- (g) **Set-Off** – This refers to the increase in the value of the remainder of the land as a result of the scheme. This should be deducted from the claim. For example, if a landlocked parcel is provided with an access. Obviously, the retained land will increase in value.
- (h) **Other Costs** – Included in this item will be the professional fees as a direct result of the claim and the cost of mitigation works, such as replacement of fences or walls. The NRA will pay professional fees up to an established rate of CI\$150 per hour. Additional information is provided below on professional fees.

Assessment Committee

If an agreement cannot be reached through negotiation, the claim is referred to the Assessment Committee via the Ministry responsible for the NRA. The Committee comprises a Magistrate and two members of the public. It determines the amount of compensation to be awarded based on the submissions of both parties, in accordance with the above heads of claim.

Within 21 days of the date of the award, an appeal can be made to the Grand Court by an interested party. The appeal must be on the following grounds:-

- (a) The extent of the interest or right in the portion of land has been wrongly determined; or
- (b) The Committee has erred in a matter of law.

Payment of Compensation

As soon as the compensation has been agreed and the offer is formally accepted by the claimant, the Valuation & Estates Office will seek approval of the agreement by the Board of the NRA.

If approved by the NRA, the Ministry will be instructed to issue a cheque made payable to the Registered Owner. Where more than one individual has an interest in the land, consent of all parties will be required before payment is made. Please note that the Law does not provide for interest to be paid.

If the compensation awarded by the Assessment Committee is not paid at the date of the award, interest will apply at six per cent per annum.

Professional Advice

It is strongly recommend that you seek advice from an experience chartered valuation surveyor or Lawyer as assessing compensation is very complex.

The NRA will pay reasonable professional fees up to an established rate of CI\$150 per hour.

Detailed records of time spent by the Professional Adviser must be provided before payment can be approved.

Disclaimer

This guidance has been prepared to provide information about The Roads Law, but should not be considered a substitute for it, or as an interpretation of the law.

The Cayman Islands Government provides no warranty as to the accuracy of the contents herein, and accepts no liability for any action taken upon the contents of this document.

Claim for compensation flow Chart

