

Land Acquisition FAQs

Ministry of Highways



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Introduction

The Ministry of Highways (MoH) invests in the provincial highway network to improve safety on our highways, and to support the economic growth and prosperity of Saskatchewan.

In the planning phase of new development, the land required to complete construction is identified. When that land is privately owned, MoH representatives will contact landowner(s) to discuss the purchase of their property. Ministry representatives are committed to listening to understand any concerns, addressing them, and resolving issues related to projects through respectful discussion. Our goal is to make every reasonable effort to develop a mutually acceptable agreement to purchase privately owned land.

Definitions¹

For the purpose of this FAQ, the following is a list of key terms:

- **Acquisition:** The process of obtaining through engagement, or through expropriation, the land necessary to construct or support a project.
- **Land Agent / Land Representative:** A person who acquires land from landowners.
- **Appraisal:** An opinion of value based upon a factual analysis. Appraisal undertaken by MoH are done by independently qualified appraisers.²
- **Appraiser:** A person who performs valuations services competently and in an independent, impartial, and unbiased manner.
- **Arbitrator:** An independent person or body officially appointed to settle a dispute.
- **Binding Appraisal:** An alternative form of dispute resolution whereby an appraisal of market value and any damages is performed by an independent appraiser at the request of a landowner and the Government of Saskatchewan based on agreement between the landowner and the Government of Saskatchewan that the compensation in dispute will be settled based on the (binding) appraisal.
- **Compensation:** Payment required to be made to a property owner by an acquiring authority in order to acquire land/property.
- **Damages:** In a partial taking (the acquisition of part of a landowner's property), the loss of value from any cause to the remainder land (or to adjoining properties in which the property owner has an interest). Generally, it is the difference between the value of the property before the acquisition and the value of the property after the acquisition less the value of the land taken. Damages are paid to the landowner, if applicable.
- **Expropriation:** A governmental action to acquire private property for public use and benefit.
- **Legal Survey:** The act by which the quantity of a piece of land is ascertained; the paper containing a statement of the courses, distances, and quantity of land.³
- **Market Value:** The most probable price which a property should bring in a competitive and open market as of the specified date under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus.⁴
- **Mediation:** The intervention into a dispute by an acceptable, impartial and neutral third party who has no decision making power that assists the parties to voluntarily reach an acceptable settlement.⁵
- **Private Land:** Land not owned by the acquiring authority.
- **Right-of-Way:** The land that a highway is built on, including the land needed for anything that is part of the highway including ditches, back slopes, bridges and culverts.²

1 UBC Real Estate Division. (2013). Lesson 11: Expropriation and Appraisal Review. BUSI 442 Course Workbook, 11.5-11.6.

Canadian Uniform Standards of Professional Appraisal Practice. (2018). Appraisal Institute of Canada, 3-13.

2 Talamo, J., J.D. (2001). *The Real Estate Dictionary* (7th ed.). USA: Financial Publishing Company.

3 Survey. (n.d.). Retrieved August 22, 2018, from <https://legal-dictionary.thefreedictionary.com/survey>

4 Ampsoker, T., Benson, T., SR/WA, R/W-RAC, Cruppi, J., R/W-RAC, Elson, P., Grigg, D., SR/WA, Hamre, L., SR/WA, R/W-RAC, R/W-URAC, ... Williams, R., SR/WA. (2012). Canadian Glossary. *Principles of Right of Way*, 4.

5 The Canadian Bar Association, Task Force Report on ADR in Canada, 1989, 15.

Project Design

1. Why is my land needed?
 - MoH often requires private land to support investment and improvements to the provincial highway network. When planning for new development, engineers and planners work to determine the optimal location for provincial highway projects and what land is required to complete construction
 - If your land is required, MoH representatives will contact you to explain the project and why your land is required. Some examples of why land may be required include:
 - installation of passing lanes to improve safety;
 - completion of highway upgrades or building overpasses to improve the safe movement of people and goods across the province; and,
 - the creation gravel pits to support construction.
2. How are land requirements determined?
 - The project design will determine the amount of land that is required. Sometimes a project will require an entire parcel and other times, just a small portion of the land is needed. Generally, you will not be asked to sell more land than is required to support the project and the provincial highway network.

Acquisition

3. What if I don't want to sell my land?
 - When land is required to support the provincial highway network, MoH usually acquires land by first discussing a purchase with the landowner(s).
 - If a mutually acceptable agreement cannot be reached, as a last resort, MoH has the ability to expropriate the land at market value plus damages, if applicable.
4. How much time do I have to agree to sell my land?
 - Once you have been presented with an offer, you have 30 calendar days to respond.
 - An offer is only presented after consultation with landowner(s) and the timing for an offer will be project specific. You will be notified of the expected timeline for an offer during your initial discussions with a MoH representative.
5. What if I change my mind?
 - Should you change your mind and decide not to sell your land, MoH is authorized by law to expropriate land.
 - MoH will compensate you for land expropriated based on fair market value plus damages, if applicable.
6. What if my land is rented?
 - In working towards a fair outcome, MoH will consult all affected parties during the acquisition process.
7. What if I co-own my land with someone else?
 - MoH will work with all landowners that are registered on the title during the acquisition process in an effort to reach a mutually acceptable agreement.

Relocation

8. Will I be relocated?

- If your house is located in an area that is affected by safety and design standards, relocation of your property may be required.
- It is possible you may be relocated to another area on your property or, in the event that all your land is required, you may be able to claim relocation compensation.
- If relocation is applicable, MoH will provide you with reasonable compensation for the relocation.

9. How long will I have to move?

- MoH Land Agent will provide you with possible solutions and more information about this process at the time of acquisition. The time requirements will vary depending on the situation.

Compensation

10. How will compensation be determined?

- Compensation for land will be based on current use not future use and any applicable damages. All proposed future land use both positive and negative will be excluded from the appraisal.
- In order to determine compensation for the land acquired, independent experts (appraisers, agrologists, etc.) are often hired.
- In certain situations, the land agent is able to perform the appraisal so consulting with independent experts (appraisers, agrologists, etc.) is not necessary.
- On a case by case basis, MoH also pays compensation for disruption and temporary damages that are not determined by experts.
- The input you provide will help to determine compensation.
- Compensation is determined based upon the requirements of legislation, namely *The Expropriation Procedure Act, 1978* ("the EPA").

11. How soon will I receive compensation?

- If only a part of your land is acquired, MoH will generally advance 70% of your compensation within 6-8 weeks of securing an interest on your title. The remaining 30% will be paid once the legal survey of the land acquired has been completed and title is transferred.
- If all of your land is acquired, you should receive 100% payment within 6-8 weeks of title transferring to MoH.

12. Will the compensation ever be changed?

- If the amount of land required is less than the original proposal, compensation for the remaining 30% will be reduced accordingly.
- If after the final legal survey has been completed and the amount of land required is less than the original proposal, compensation for the remaining 30% will be reduced to match the area required for the highway project. If this is the case, your land agent will have more information at the time.

13. Do I have to hire a lawyer?

- Hiring a lawyer is optional.
- Lawyers can be helpful with explaining your rights and actions you can take if you disagree with compensation.
- Lawyers can also help you through the legal process of having compensation resolved if you decide to make a compensation claim through the court.

Land Appraisals

14. Can I hire my own appraiser?

- You have the option to independently consult with a qualified appraiser.
- You also have the option of agreeing with MoH to jointly instruct a qualified appraiser to determine compensation. This option is at no cost to you and provides an ideal path to determining compensation.

15. What if there are conflicting appraisal values?

- There are a number of options to resolving conflicting values. The options include:
 - MoH and landowner(s) agree to let an arbitrator decide what compensation should be based on the different appraisal opinions.
 - MoH and the landowner agree to retain an appraiser to perform a binding appraisal.
 - If the higher appraised value is reasonable, MoH will pay the higher value.

16. Will I be notified before the appraisal is done on my land?

- As part of the initial landowner engagement process, appraisers hired by MoH will make reasonable efforts to contact landowners.

Damages

17. What are some examples of compensable damages?

- Examples include:
 - reduction in the market value to the remainder land;
 - crop damage;
 - fencing replacement;
 - mortgage penalties;
 - increased operating costs; and,
 - relocation expenses.

Resolving Compensation Disputes

18. What if I am not satisfied with the compensation offer?

- Options to reach a mutually acceptable agreement include mediation, arbitration and binding appraisal. These options are subject to agreement by both parties.
- If you choose to contest the compensation amounts offered, the EPA requires you to begin legal proceedings within two (2) years of the date of possession shown on your Notice of Expropriation.
- If you choose to file a court claim for compensation, MoH is open to continue discussions in an effort to reach a mutually acceptable agreement.
- It is important to understand MoH representatives are trustees of public funds and that, by law, these officials cannot settle claims without evidence that is verifiable and reasonable.

19. What if I choose not to cash my cheque?

- If you choose not to cash your cheque, the EPA provides a mechanism for MoH to pay your compensation into the courts. You will then need to go to the courts to obtain your compensation.

20. If I cash my compensation cheque, can I still make a claim?

- Yes, cashing your cheque does not prevent you from seeking additional compensation.
- You have the right to make a claim for additional compensation if you believe the offer you have received is inadequate.

21. Will I have to go to court?

- If you decide to file a court claim, it is likely that you will have to go to court if a resolution is not achievable without a court decision. All questions of compensation will be settled through discussion or at the option of the landowner(s) by the Court of Queen's Bench.

Expropriation

22. What right does MoH have to expropriate my land?

- In Canada, the federal and provincial governments have laws that allow land to be acquired for public use and benefit without the consent of the landowner.
- Expropriation is a last resort. The preferred method is always to work toward a mutually acceptable agreement.
- By legislation, landowners are entitled to compensation for market value of the land acquired plus damages, if applicable.
- Expropriation is available to protect the public interest when a landowner does not want to sell land for a highway project that is in the public interest.
- Expropriation legislation also ensures that landowners are protected and will receive fair market value for their land, plus damages if applicable.

23. When does expropriation occur?

- Expropriation occurs when any one or more of the following circumstances arise:
 - the landowner is disagreeable to the project, hence refuses to sell land;
 - there is an impasse respecting compensation; and/or,
 - there are issues related to the title of the land (ie: estate issues, unidentified land owner(s), etc.).

24. How does expropriation work?

- Under the EPA, MoH is required to discuss purchase of lands before initiating the expropriation of land.
- If MoH has to expropriate, you will receive a Notice of Expropriation along with MoH's offer of compensation.
- If only a part of your land is expropriated, you will receive a 70% compensation advance. The remaining 30% will be paid once the final legal survey for the land acquired has been completed and the title is transferred to MoH. If all of your land is acquired you will receive 100% compensation, generally within 6-8 weeks of you receiving your Notice of Expropriation.
- You should be aware that when MoH requires a portion of your land, a Notice of Expropriation will be registered on the title for your entire parcel of land until title is transferred to MoH for the land acquired.
- You have two years (2) from the date of possession shown on your Notice of Expropriation to file a claim.

25. Can I appeal the expropriation?

- Under the EPA, you do have the right to challenge compensation but not the lawful expropriation of land.

Key Contacts

26. Regarding the acquisition process, how can I learn more about my rights?

- You can:
 - Refer to the [Expropriation Procedures Act](#).
 - Refer to [The Highways and Transportation Act, 1997](#).
 - Obtain legal counsel to know more about your rights by contacting [The Law Society of Saskatchewan](#).
- You also have the right to ask the Public and Private Rights Board to review your situation. The Public and Private Rights Board offers mediation services if there is an impasse. You can contact the Public and Private Rights Board by visiting their [website](#) or by calling:
 - Regina: (306) 787-4071