

CHAPTER 113
LAND ACQUISITION POLICIES FOR FEDERALLY
ASSISTED PROGRAMS

Section

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" **[\$113-1] Application.** This chapter shall be applicable to the acquisition of real property under the laws of the State for use in any project or program in which federal or federal-aid funds are used. [L 1971, c 32, §1]

" **[\$113-2] Property acquired; reimbursement of owner.** In acquiring real property for use in any project or program in which federal or federal-aid funds are used, the State shall as soon as practicable after the date of payment of the purchase price or the date of deposit into court of funds to satisfy a judgment in a condemnation proceeding to acquire real property, whichever is the earlier, reimburse the owner, to the extent the State deems fair and reasonable, for expenses the owner necessarily incurred for (1) recording fees, transfer taxes and similar expenses incidental to conveying such real property to the State; (2) penalty costs for prepayment of any preexisting recorded mortgage loan entered into in good faith and encumbering such real property; and (3) the pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the State, or the effective date of possession of such real property by the State, whichever is the earlier. [L 1971, c 32, §2; gen ch 1985]

" **[\$113-3] Property not acquired; reimbursement of owner.** Where a condemnation proceeding is instituted by the State to acquire real property for use in any project or program in which federal or federal-aid funds are used and (1) the final judgment is that the real property cannot be acquired by condemnation or (2) the proceeding is abandoned, the State shall pay the owner of any right, title or interest in such real property such sums as will, in the opinion of the State, reimburse such owner for the owner's reasonable attorney, appraisal and engineering fees actually incurred because of the condemnation proceedings. [L 1971, c 32, §3; gen ch 1985]

" **[\$113-4] Proceeding by owner.** Where an inverse condemnation proceeding is instituted by the owner of any right, title or interest in real property because of use of the owner's property in any program or project in which federal or federal-aid funds are used, the court, rendering a judgment for the plaintiff in such proceeding and awarding compensation for the taking of property, or the State's attorney effecting a settlement of any such proceeding, shall determine and award or allow to such plaintiff, as a part of such judgment or settlement, such sums as will, in the opinion of the court or the State's attorney, reimburse such plaintiff for the plaintiff's reasonable costs, disbursements and expenses,

including reasonable attorney, appraisal and engineering fees, actually incurred because of such proceeding. [L 1971, c 32, §4; gen ch 1985]

" **§113-5 Policy provisions.** In acquiring real property for any project or program in which federal or federal-aid funds are used, the State shall comply with the following policies:

- (1) Every reasonable effort shall be made to acquire expeditiously real property by negotiation.
- (2) Real property shall be appraised before the initiation of negotiations, and the owner or the owner's designated representative shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property; provided that the State may proceed without an appraisal in cases involving the donation of property or the voluntary conveyance of property for nominal value or where the property has fair market value of \$2,500 or less.
- (3) Before the initiation of negotiations for real property, an amount shall be established which is reasonably believed to be just compensation therefor and such amount shall be offered for the property. In no event shall such amount be less than the approved appraisal of the fair market value of such property.
- (4) No owner shall be required to surrender possession of real property before the agreed purchase price is paid or before there is deposited with the state court, in accordance with applicable law, for the benefit of the owner an amount not less than the approved appraisal of the fair market value of such property, or the amount of the judgment in the condemnation proceeding involving the property.
- (5) The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling will be available) or to move the person's business or farm operation without at least ninety days' written notice from the date by which such move is required.
- (6) If an owner or tenant is permitted, on a rental basis, to occupy the real property acquired for a short term or for a period subject to termination by the State on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

- (7) In no event shall the time of condemnation be advanced, on negotiations or condemnation and the deposit of funds in court for the use of the owner be deferred, or any other coercive action be taken to compel an agreement on the price to be paid for the property.
- (8) If an interest in real property is to be acquired by exercise of the power of eminent domain, formal condemnation proceedings shall be instituted. The State shall not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of the owner's real property.
- (9) If the acquisition would leave the owner with an uneconomic remnant, the State shall offer to acquire that remnant. For the purposes of this section, an "uneconomic remnant" is a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property and which the State has determined to have little or no value or utility to the owner.
- (10) All buildings, structures, or other improvements which must be removed or which are adversely affected by the use to which the real property acquired will be put, shall be acquired.
- (11) Notwithstanding the obligation of a tenant or lessee, as owner, to remove a building, structure or other improvement at the expiration of the tenant's or lessee's term, just compensation shall be paid to the owner for the taking of such building, structure or other improvement, just compensation being the value which such building, structure or other improvement contributes to the fair market value of the real property, or the fair market value of such building, structure, or improvement alone, whichever is the greater; provided that payment for such buildings, structures or other improvements shall not result in duplication of payments unless otherwise authorized by state law; and provided further that no such payment shall be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. Nothing herein shall be construed to deprive the tenant of the tenant's right to reject the proffered payment and to seek compensation for the tenant's property interest through other laws of the State.
- (12) After the owner is fully informed of the owner's right to receive just compensation for property being

acquired under this chapter, the owner may donate such property, any part thereof, any interest therein, or any compensation to be paid therefor to the State.

- (13) The term "State", as used in this chapter, means the State of Hawaii and any department, agency, or instrumentality of the State, or a political subdivision of the State.
- (14) The term "appraisal" means a written statement, independently and impartially prepared by a qualified appraiser who meets qualification criteria established by the State, setting forth an opinion of the fair market value of adequately described property as of a specific date, supported by the presentation and analysis of relevant market information. [L 1971, c 32, §5; gen ch 1985; am L 1989, c 52, §1]