



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 purpose of these notes is to provide simple guidance about compulsory purchase and compensation under the Roads Law 2005 Revision. It should not be regarded as a full and detailed explanation of the Law, nor as a formal interpretation of it. If your land is subject of a compulsory acquired notice, you are strongly advised to seek professional advice.

The Law 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 day the Section 3 notice is published in the Cayman Islands Gazette is known as the declared day. The notice sets the valuation date.

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

Notice of intention to claim (Form A)

Not later than 90 days after the declared day, any person having an interest in the affected land must submit a Notice of intention to claim (Form A) to the Valuation and Estates Office (agents for the National Roads Authority (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 affected person 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.

In order to be entitled to claim compensation under the Law, a person must

- (a) have had an interest in the land acquired compulsorily;
- (b) must be able to show that he has sustained a “net loss”; and
- (c) completes and sends to the NRA within the relevant time limits the notice of intention to claim mentioned above and then a duly completed claim form.

In addition to completing the form, it would be helpful if supplementary notes could be provided to explain how the amounts claimed under each head have been calculated and mentioning any supporting evidence which is considered to be relevant.

Any notice of intention to claim (Form A) and/or claim for compensation (Form B) submitted after the deadline will not be accepted, unless the NRA is satisfied that the delay in submission 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

To be entitled to monetary compensation, the claimant must show that he/she has suffered a “net loss”. This means that the person claiming must be able to show that the aggregate of the market value of the land acquired, any loss of crops and any damage due to severance and injurious affection exceeds the increase in the value of that person’s land as a result of the new (or, as the case may be) improved road.

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. It should be noted that the market value of the land acquired must be assessed as if it had hypothetically been offered for sale on the open market by a willing seller separately from any other land held by the person claiming. It is not relevant that the sale is compulsory and that the actual owner did not want to sell.
- b) **Trees & Crops** - Damage sustained to any standing crops or tress 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. This refers mainly to trees and crops that have an agricultural value. Also, it cannot be claimed if the compensation is to be based on the land if undeveloped.
- 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.

The NRA may be willing to pay for works which mitigated the impact of the new road (for example the replacement of boundary walls and fences) where such works will reduce the amount of compensation otherwise payable. However, the cost of such works will only be payable if they have been agreed with the NRA before such works are carried out. Consequently, where it is desired to carry out mitigation works, it is recommended that you discuss these with the NRA beforehand.

It should be noted that where the person claiming compensation owns other adjacent land (which has not been acquired compulsorily) which has increased in value as a result of the new or improved road then that increase will have to be set off against the compensation otherwise due.

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 Roads Law does not provide for interest to be paid prior to the date of the award of the Roads Assessment Committee.

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 for professional fees incurred in connection with preparing and negotiating the claim for compensation before the claim is referred to the Roads Assessment Committee. (Note that, after a claim has been referred to the Roads Assessment Committee, the Committee will make award costs as it sees fit. It is likely to award costs to the successful party unless there are special reasons to order otherwise). The mere fact that a person is contractually obliged to pay the fees of a professional adviser does not mean that those fees will automatically be reimbursed by the NRA. A claim for professional fees must be reasonable and proportionate to the claim both in terms of the hours spent and the charge per hour. As guidance, the NRA is likely to regard an hourly charge in excess of CI\$150 to be unreasonable.

Disclaimer

While we have tried to ensure that these notes are clear and accurate, 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

