DATE: September 09, 2019

TO: Users of the Real Estate Manual

FROM: Wayne Pace, Manager Acquisition Unit

RE: Changes and Updates to the Real Estate Manual

The only current and accurate source of ODOT’s Real Estate Manual is on the Office of Real Estate’s website. This site is located at: [http://www.dot.state.oh.us/real](http://www.dot.state.oh.us/real). Desired information can be accessed by scrolling down the left column and selecting “Manuals and Booklets.” Specific information can be selected by clicking on the desired section.

The Real Estate Manual is a “living document” as procedures will evolve and change. Individuals or firms providing various services to the Office of Real Estate (e.g. negotiations, titles, appraisal, appraisal review, relocation, relocation review, closing, property management, railroad coordination and utility relocation) must perform these services in compliance with current published policies and procedures. Individuals utilizing a hard copy version of the manual, without accessing the website for updates, risk providing non-compliant services to the Office of Real Estate. Therefore, all users must be aware of the changes as various sections of the manual are updated.

ODOT will provide notice of manual changes on the Design Reference Resource Center (DRRC) web page. Users of the manual can access this page and subscribe to be made aware of manual changes via e-mail notification. Then, when changes to the manual occur, ODOT will provide direct notice to the subscriber. This page can be accessed at [http://www.dot.state.oh.us/DRRC](http://www.dot.state.oh.us/DRRC) Scroll down to “Real Estate Policies and Procedures Manual” and select the desired section for updates, or enter your e-mail address to subscribe for changes. It is the user’s responsibility to maintain their most current e-mail address on the DRRC notification system. The DRRC web site is updated four times a year.

The Office of Real Estate may also provide additional guidance to its procedures by Inter-Office Communications (IOC’s). These communications will be made a part of the Real Estate Manual. If Individuals having questions pertaining specifically to this Section, contact me at (614) 995-3541.
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5701 Regulations Controlling Conveyance and Disbursement

The process of closing a parcel being acquired for a highway project consists of all things necessary to disburse compensation to the owner and to convey the real estate into the name of the Ohio Department of Transportation. This process must comply with Federal and State regulations.

A. Anyone performing any closing or closing-related function shall comply with the Uniform Act.

1. 49 CFR 24.106, Expenses Incidental to the Transfer of Title to the Agency, controls the closing process as follows:

   “The owner of the real property shall be reimbursed for all reasonable expenses incurred for:

   a. Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying real property to the Agency. However, the Agency is not required to pay costs solely required to perfect the owner’s title to the real property.

   b. Penalty costs and other charges for prepayment of any existing recorded mortgage entered into in good faith encumbering the real property.

   c. The pro rata portion of any prepaid real property taxes which are allocable to the period after the Agency obtains title to the property or effective possession of it, whichever is earlier.

   Whenever feasible, the Agency shall pay these costs directly so that the owner will not have to pay such costs and then seek reimbursement from the Agency.”

The District Office implements this regulation by directly paying these costs. ODOT implements this Federal Code in Ohio Administrative Code 5501:2-5-06(F).

2 Those performing the closing function are also to be aware of 49 CFR 24.102 (j), Payment Before Taking Possession, which requires the following:
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“Before requiring the owner to surrender possession of the real property, the Agency shall pay the agreed purchase price to the owner, or in the case of a condemnation, deposit with the court, for the benefit of the owner, an amount not less than the Agency’s approved appraisal of the market value of such property, or the court award of compensation in the condemnation proceeding for the property. In exceptional circumstances, with the prior approval of the owner, the Agency may obtain a right of entry for construction purposes before making payment available to the owner.”

ODOT implements this Federal Code in Ohio Administrative Code 5501:2-5-06(B)(10).

3. The closing agent shall be aware of the following Federal Code, 49 CFR, Subpart A, 24.09, Recordkeeping and Reports, which requires:

“The Agency shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this part.”

The District Office satisfies compliance to this regulation by maintaining Negotiator’s Notes and putting all forms and correspondence for an acquisition, including anything from the closing process, into the acquisition parcel file. ODOT implements this Federal Code in Ohio Administrative Code 5501:2-5-01(I).

5702 Procedure for Conveyance and Disbursement - Fee Acquired Parcels

A. Once negotiations are finalized and the parcel is turned in for “billing” and the closing agent should start RE 57 process and the mortgage release process, if needed.

1. “Billing” is a process that reviews the entire parcel file to ensure the acquisition process to date has been done in a manner that is compliant with the Uniform Act, State regulation and ODOT procedure. This review is done by someone within the District Office who is an expert in the acquisition process. Once the parcel has been reviewed and is determined to be compliant, it is forwarded to the Fiscal Section for a check (warrant) needed for closing.

2. The RE 57 is a form sent to the County Auditor to determine the taxes and assessments owed against the area to be taken for the highway project. See the 5600 section of the Real Estate Manual for more detail about this process. The time needed to receive RE 57 back from the Auditor can be lengthy. Therefore, it is good project management practice to allocate sufficient time for this process.
The closing agent must review the RE 57 once it is received from the County Auditor. The agent will communicate to the owner the amount of taxes owed against the property. At closing, the agent is to collect the owner’s share of real estate taxes based on the information on the RE 57. If the RE 57 was filled out wrong resulting in not enough taxes being collected, the Department of Tax Equalization will not allow the District Office to exempt the newly-acquired fee acquisitions property from taxation. To avoid this problem, the closing agent needs to competently review the RE 57.

3. Securing mortgage releases is often time intensive, especially when dealing with an out of state lenders. It is good project management practice to allocate sufficient time for this process.

B. The next step for the closing agent is to review the acquisition file. At closing, the agent is responsible to collect from the owner: 1) their share of real estate taxes; 2) any assessments that are owed; and, 3) any liens or other encumbrances owed by the owner. Therefore, the agent must be knowledgeable of the title report including unpaid taxes, assessments, mortgages and liens that must be satisfied or addressed prior to the disbursement of funds. The agent must be aware of any title irregularities affecting the closing process.

The agent must be knowledgeable of the information in the Negotiator’s Notes, especially the Remarks box of the RE 60. The closing agent is to discuss the closing with the negotiator. An option is for the negotiator to supply the closing agent any information in writing the negotiator believes is helpful in completing the closing.

The closing agent is to request or prepare any additional instruments or forms which the agent has determined from his/her review is needed for completing the closing.

C. The closing agent is to follow up with the Fiscal Section of the District Office to determine when the warrant has arrived in the office.

1. Once the acquisition parcel file has been reviewed and approved by the billing agent, the warrant should have arrived in the District Office.

2. Once the warrant is received, the closing agent is to contact the property owner and arrange a time, date and place for closing.

3. After closing, the agent is required to record the instruments. District staff should obtain the necessary number of checks from the fiscal section to pay for the recordings.
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D. In preparation for the closing, the agent is to fill out the:

1. RE 44
2. RE 45
3. Instrument(s)

E. If a mortgage release is needed, the closing agent shall ensure, prior to closing, a mortgage release is secured from the lending institution.

F. Immediately prior to closing and before any funds are disbursed, the closing agent shall secure a title update to ensure there have been no changes in ownership and that there have been no changes to liens, mortgages or other encumbrances. The closing agent shall immediately seek guidance from the District Manager when changes are apparent from the updated title report.

G. The general process to close and disburse is as follows:

1. It is recommended the District Office have a face-to-face closing with the owner when funds are disbursed, and the instrument is signed for WD and WL acquisitions (fee acquisitions). When the District only acquires easement interests (LA, SH, CH, etc.), the closing can be done by mail.
   
   a. When closing by mail, closing agents are to use certified or registered first class mail with return receipt requested for the mailing of warrants to owners.
   
   b. Closing agents shall ensure ODOT is in receipt of the signed instrument prior to funds being disbursed.
   
   c. The closing agent is responsible to: 1) follow up with any lender to assure that a mortgage release, if needed, has been secured; 2) ensure the release is in the acquisition file; and, 3) ensure the release has been recorded.

2. Prior to disbursing funds to the owner(s), the closing agent shall review the closing statement with the owner(s) and lien holders present.

3. The closing agent is to then review the pro-rated taxes and assessments due to date of closing and inform the property owner to that he is responsible to pay these taxes and assessments.

4. The closing agent is to review the mortgages and liens and the requirements for their release. The closing agent is to determine from the owner(s) if any new
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encumbrances have been placed on the property that have not been discovered by
the title update

5. The closing agent is to discuss and then have the owner sign the Affidavit of
Seller (RE 45).

6. The closing agent shall review the instrument(s) to be signed by the property
owner, specifically reviewing the proper names for the owners, the area of the
deed with applicable P.R.O. and any rights retained by the owner. The owner is to
sign the instrument(s).

7. At closing, the agent reviews and then has the owner sign the RE 44 (Closing
Statement). The owner is to then give the closing agent a check made out to the
County Treasurer for the pro-rated taxes and assessments.

8. The closing agent then disburses the funds and obtains the lien/mortgage releases
as required by the lien/mortgage holder.

   a. Another option available for the closing agent is to close at the lender’s
location. At times it may be appropriate to allow the owner to sign the
warrant over to the lender and then the lender can take the amount needed
for the loan. The lender can then issue a check to the County Treasurer
based on the RE 57 and issue another check to the owner for the balance.
The closing agent is still responsible to carry the check to the County
Treasurer.

   b. The RE 44, once signed by the seller, documents the seller’s receipt of the
warrant. The District may optionally have the seller sign and date their
signature on the warrant page as receiving the warrant.

9. The closing agent at their earliest opportunity, preferably the same day as the
closing or early the next business day, shall submit the signed instrument for
recording at the County Recorder’s Office. While on location at the courthouse,
the closing agent is to go to the Auditor’s Office and obtain a copy of the Tax
Bill. The agent is then to take that bill and the check from the property owner for
the amount of the pro-rated taxes to the Treasurer’s Office. The Treasurer’s
Office is to stamp the bill “paid” and is to give the agent a receipt documenting
payment of the prorated taxes.

   a. While recording the parcel, the closing agent shall go to the Auditor’s
Office and submit an RE 30-A form for the fee closings to start to tax
exemption process. To exempt ODOT from the liability of paying a
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conveyance fee, the agent shall fill out the DTE form 100EX while at the Auditor’s Office.

10. The owner will eventually receive the real estate tax bill from the County Auditor and that bill will provide evidence of the taxes being paid up until the date of closing. The District does have the option of making copies of the receipt and the “paid” stamped bill and these copies can remain in the District’s parcel acquisition file. The original of the receipt and the stamped bill can be sent to the property owner to document the taxes were paid to the date of closing.

11. When the recorded instrument is received from the Recorder’s Office and all other closing documentation is complete, the closing agent must submit the acquisition package to the District Manager.

12. Closings involving structure parcels do require an inspection of the structure either prior to closing or post-closing. The process requires an agent to compare the RE 95 form to the improvements actually on site. The District Offices have discretion in this area because of the variables involved with these categories of properties.

5703 Procedure for Conveyance and Disbursement – Easement Acquired Parcels

A. Easement parcels include, but are not limited to, SH, LA, CH, SL, T, and A parcel designations. The closing process for these acquisitions is generally done by mail. The general steps for these closings are as follows:

1. Once negotiations are finalized, the parcel is turned in for “billing”. Often, during the negotiation process, the owner will have signed the instrument. There is no RE 57 process as the underlying fee ownership position of the property is retained by the owner. However, a mortgage release may be necessary. See Section 5702 of these procedures for more information pertaining to billing and releases.

2. The next step for the closing agent is to review the acquisition file. The agent must be knowledgeable of the title report, Negotiator’s Notes (RE 60/60-1), the RE 22, items to be retained by the owner and anything else that is pertinent to the closing process.

   a. The closing agent is to discuss the closing with the negotiator. An option is for the negotiator to supply the closing agent any information in writing.
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the negotiator believes is helpful to the closing agent in completing the closing.

b. The closing agent is to request or prepare any additional instruments or forms which the agent has determined from his/her review is needed for completing the closing.

3. The closing agent is to follow up with the Fiscal Section of the District Office to determine when the warrant has arrived in the office. Once the warrant is received, the closing agent will create a letter to the property owner. This letter will provide explicit details to the owner to enable the owner to adequately fill out all forms that must be sent back to the District office.

a. For easement-only acquisitions, no RE 44 or RE 45 is required.

b. The instrument(s) is to be included with the letter, so the seller can sign the instrument and send it back to the District.

4. If a mortgage release is needed, the closing agent shall ensure that prior to closing and disbursement of funds to the owner that a mortgage release is secured from the lending institution.

5. Immediately prior to closing and before any funds are disbursed, the closing agent shall secure a title update to ensure that there have been no changes in ownership and that there have been no changes with respect to liens, mortgages or other encumbrances. The closing agent shall immediately seek guidance from the District Manager when changes are apparent from the updated title report.

6. When the documentation (including the signed instrument) comes back from the owner, the closing agent shall then disburse funds to the owner and obtain a signed receipt for the warrant.

7. The closing agent shall submit the deed/instrument for recording at the County Recorder’s Office on the same day that the deed arrives in the mail or the very next business day.

a. To exempt ODOT from the liability of paying a conveyance fee, the agent shall fill out the DTE form 100EX while at the Auditor’s Office.

b. If the interest acquired is an easement interest, the closing agent shall submit the RE 31 to the County Auditor.

8. When the recorded instrument is received from the Recorder’s Office and all
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other closing documentation is complete, the closing agent must submit the acquisition package to District Manager.

9. For structure parcels, someone will need to inspect the property.

5704 Recording

A. All releases of liens or mortgages secured by the District Office are to be recorded with copies of the recorded releases retained in the parcel file.

B. All instruments used by the District Office to acquire any property right from any owner shall be recorded with copies of the recorded instrument retained in the parcel file. All instruments shall be recorded within one business day of closing.

1. The only exceptions to recording instruments are temporary easements for construction purposes (T parcels) when the T does not create a permanent, negative affect on the residue property. The District Office must be aware that a T parcel not recorded may require the purchase of a subsequent easement if the property is conveyed to a new owner.

C. The District has discretion to determine if a right of entry is recorded or not. If the property is listed “for sale”, the District may need to secure another right of entry if the property sells during the term of the right of entry.

5705 Closing Mobile Homes

5705.01 General

A. Mobile homes may be taxed based on their status as personal property or real property. Therefore, the closing agent must determine from the County Auditor’s Office if the mobile home is personal property or real property.

1. The County Auditor’s determination may be different than what was considered in the State’s appraisal or relocation process. Note – it does not matter how ODOT classified the property, what does matter is how the County Auditor is taxing the acquired property.

B. The closing agent shall be aware of the law pertaining to the tax issues for mobile/manufactured homes which is R.C. 4503.06 and 4503.061.
C. Legal code in Ohio is tending to direct mobile homes to be categorized as real property. Section 4503.06 (B) of the ORC states:

The owner of a manufactured home shall pay real property taxes if either of the following apply:

(1) The manufactured or mobile home acquired situs in the state or ownership in the home was transferred on or after January 1, 2000, and all of the following apply:

   (a) The home is affixed to a permanent foundation as defined in division (C)(5) of section 3781.06 of the revised Code;

   (b) The home is located on land that is owned by the owner of the home;

   (c) The certificate of title has been inactivated by the clerk of the court of common pleas that issued it, pursuant to division (H) of section 4505.11 of the Revised Code.

(2) The manufactured or mobile home acquired situs in the state or ownership in the home was transferred before January 1, 2000, and all of the following apply:

   (a) The home is affixed to a permanent foundation as defined in division (C)(5) of section 3781.06 of the revised Code;

   (b) The home is located on land that is owned by the owner of the home;

   (c) The owner of the home has elected to have the home taxed as real property and, pursuant to section 4505.11 of the revised Code, has surrendered the certificate of title to the auditor of the county containing the taxing district in which the home has its situs, together with proof that all taxes have been paid;

   (d) The county auditor has placed the home on the real property tax list and delivered the certificate of title to the clerk of the common pleas that issued it and the clerk has inactivated the certificate.
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5705.02 When the Mobile Home is Determined to be Real Property

A. There are ramifications when the Auditor’s Office determines the mobile to be real property and they are:

1. The owner surrenders the title of the mobile home to the Auditor. As a result, this mobile will never have a vehicle title issued again.

2. A mobile home that is classified by the Auditor as real property and which has had title to the vehicle inactivated can never be transported on the public road system.

3. The process of salvaging the mobile is affected by this action. The mobile home cannot be legally moved using any public road. Therefore, whom ever purchases the mobile cannot move it to another location unless it is onto a residue property or some other building mover system is used to transport the mobile home off the project.

4. The process to close is the same as with any other real property closing.

5705.03 When the Mobile Home is Determined to be Personal Property

A. When the Auditor’s Office determines the mobile home to be personal property, the owner retains the title to the vehicle.

B. The procedure to close requires the closing agent to secure three copies of a power of attorney for:

1. One copy is for the Auditor’s Office because the Auditor does not release information pertaining to taxes without this power of attorney.

2. Another copy is for ODOT which facilitates the transfer of ownership from the seller of the mobile home to ODOT.

3. The third copy is required for the circumstance when ODOT conveys the ownership the mobile home to a purchaser.

C. A mobile home that is determined to be personal property cannot be moved on a public road unless all tax delinquencies are paid. Currently, law only requires a maximum of 5 years delinquencies to be paid. See ORC 4503.061(H)(1).
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5705.04 Determine the Lien

A. As part of the closing, the agent must determine if there is a lien or a mortgage against the mobile home. These types of liens may be found on record at the BMV (Bureau of Motor Vehicles) or at the Auditor’s; therefore, both sources must be checked.

B. Depending on the county, the lien/mortgage can be found under the property owner’s name, or, under the VIN of the title, or, can be specific to an Auditor’s parcel and found on the face of the title.

C. The closing agent is responsible to pay off the mortgage and record the cancellation/satisfaction of the mortgage.

5705.05 Real Estate Taxes

A. If the mobile home is determined by the Auditor to be real property, taxes are handled in the same way as for any other transaction. See the 5600 section of the manual for more information pertaining to real property taxes.

B. If the mobile home is determined to be personal property, the closing agent must be assured that all taxes are paid and that there are no delinquencies. Currently, the payment for personal tax delinquencies can only go back to a maximum of 5 years.

C. It is critical that all tax delinquencies be paid at closing as state gas tax funds cannot be used to pay delinquencies. See Section 5607.04 of the policy and procedures manual.

5706 Registered Lands

5706.01 General

A. ODOT may find that it has a need for real property that is registered, pursuant to Ohio Revised Code Chapter 53, for highway projects. ODOT may either seek to purchase, or if necessary appropriate, the property at issue. In such cases, there are procedures that must be followed in order to obtain a Certificate of Title in the name of ODOT, so that the deed can be properly recorded.

B. When ODOT takes register land, it does not have to register its take. However, the owner’s residue needs to be registered after the take. There are differences in this process between the counties in Ohio. In general, a county requires the owner to surrender the original certificate, and assume a partial taking, the county requires a survey for the residue and the take area. The county may also require a title search by a court approved abstractor. ODOT pays for all of the expenses for this process. The negotiator/closing
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agent needs to inform the property owner that they must find and present their certificate of the registered land.

5706.02 Registered Lands Defined

A. Registered lands are established as “registered” via a process by which land titles were registered under the Torrens Act of 1922 and Sections 5309.02 through 5310.21 of the Ohio Revised Code are the law for registered land. Registered lands are available for public viewing in the county administration building (may vary per county).

5706.03 Laws Pertaining to Registered Lands

A. RC 5309.40; Transfer of Estate by Registered Owner in Fee
   To transfer the ownership of a whole, part, or undivided interest in property, the registered owner, the Transferor, must execute a deed or instrument of conveyance to the Transferee (ODOT). If the transfer is for the whole property, the Transferor can execute the transaction on the duplicate certificate of title. To have a proper transfer, either the Transferor or the Transferee must deliver the duplicate certificate of title to the county recorder. The recorder will enter into the register and upon the duplicate certificate of title a memorandum canceling the duplicate, in whole or part, as appropriate. The recorder will file the deed or instrument of transfer as presented by the Transferee and will register the title of the property in the Transferee’s name. The recorder will issue a new certificate of title to the Transferee.

B. RC 5309.52; Transfer of an Estate Less Than Fee
   A new certificate of title will not be entered into the register or issued unless the transfer divests the title in fee from one or some of the registered owners. To transfer a lessor estate, an owner may execute a deed, lease or other instrument to the Transferee, giving the title of his certificate and other requirements of identification (not listed in the statute - check with the county recorder). The Transferee must present the deed, lease or instrument together with the owner’s duplicate certificate of title to the recorder. The recorder will file the instrument and indorse upon it the time of the filing.

C. RC 5309.44; New Certificate of Title Issued
   Production of the owner’s duplicate certificate of title is authority for the recorder to issue a new certificate or make a proper memorial of an instrument of transfer in the register. No new certificate of title will be issued, or memorial made unless the owner’s duplicate certificate of title is presented or upon an order of the court, for cause shown.
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D. RC 5309.52; Entry of Release or Discharge of Encumbrance
When a registered encumbrance, such as a lien, mortgage or lessor estate is satisfied, discharged or released, the one holding the encumbrance (mortgage, assignee, lien holder) or his/her legal representative shall file with the recorder or deliver to the owner the satisfaction, discharge or release of the encumbrance. The recorder will enter the same upon the registered certificate of title, upon the original instrument on file or in the margin of the record and note the cancellation in all indexes. The original or a duplicate of the original encumbrance instrument must be presented to the recorder. If the encumbrance is discharged, but the holder fails to file such satisfaction or release, or the same is lost or destroyed, the Transferor or other person entitled to a discharge can give 10 days’ notice to the holder and present proof of the release to the court. The recorder will, upon court order, enter the release upon the registered certificate of title, upon the original instrument on file or in the margin of the record, and note the cancellation in all indexes.

E. RC 5309.37; Transfers of Registered Land; Certificate as Taxes and Special Assessments
The transfer of registered land must also be entered in the office of the county auditor for purposes of determining taxes and special assessments. The auditor will issue a certificate of taxes and special assessments, as appropriate.

5707 Post Closing Process

A. It is recommended the District Office implement a post-closing process to ensure all appropriate closing documents are signed and in the parcel file. The items listed below represent a list of items for a post-closing parcel file:

1. The parcel file contains a title report update reflecting the current ownership at the time of closing. The title update should occur the same day, prior to, closing. The person or people signing the instrument are to be the same as reflected on the title report.

2. The original recorded instrument(s) are in the parcel file. The instrument(s) are to be delivered for recording within one business day of closing.

3. For fee acquisitions, a duplicate copy of the RE 30-A form showing a date and time stamp from the County Auditor Office.

4. The RE 57 is completed and signed by the County Auditor and a receipt for the taxes paid.
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5. All mortgage and lien releases, or memos for releases, are signed and in the parcel file.

6. For fee takings, the RE 44 (Closing Statement) is completed, signed and in the parcel file.

7. For fee takings, the RE 45 (Affidavit by Seller) is completed, signed and in the parcel file.

8. A copy of the completed DTE 100EX form in the parcel file.

9. The file should be neat and arranged in an organized manner with duplicate paperwork discarded. Anyone picking the file up and reviewing it should have no problem understanding the sequence of events through closing and the file should sufficiently document compliance with Federal and State requirements for recording keeping including providing evidence of compliance to these procedures.