

Subpart F. UNIFORM RELOCATION ASSISTANCE

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CHAPTER 151. GENERAL PROVISIONS

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Authority

The provisions of this Chapter 151 issued under the Eminent Domain Code (26 P. S. §§ 1-201—1-902), unless otherwise noted.

Source

The provisions of this Chapter 151 adopted July 14, 1972, effective July 15, 1972, 2 Pa.B. 1333, unless otherwise noted.

§ 151.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Acquired dwelling—A dwelling which has been acquired for a program or project by an acquiring agency.

Acquiring agency—An entity vested with the power of eminent domain by the laws of the Commonwealth.

Acquisition cost—General damages, or in the event of amicable acquisition, the price paid by the acquiring agency in lieu thereof.

Act—The Eminent Domain Code (26 P. S. §§ 1-101—1-617.1).

Amount necessary to rent comparable decent, safe and sanitary dwelling—The actual rental paid by a displaced person for a decent, safe and sanitary replacement dwelling or the amount determined to be necessary to rent a comparable replacement dwelling, whichever is the lesser.

Business—A lawful activity, with the exception of a farm operation, conducted primarily for the following purposes:

(i) The purchase, sale, lease or rental of personal or real property, or for the manufacture, processing or marketing of products, commodities or other personal property.

(ii) The sale of services to the public.

(iii) A nonprofit organization venture.

(iv) As qualification for damages under section 601-A (a), (b)(1) and (4) of the act (26 P. S. § 1-601A(a), (b)(1) and (4)) for assisting in the purchase, sale, resale manufacture, processing or marketing of products, commodities, personal property or services by the erection and maintenance of outdoor advertising displays whether or not the displays are located on the premises on which the activities are conducted.

Comparable replacement dwelling—A dwelling which meets the following standards:

(i) Decent, safe and sanitary.

(ii) Functionally equivalent and substantially with same as the acquired dwelling with respect to number of rooms, area of living space, age and state of repair.

(iii) Adequate in size to accommodate the family or individual.

(iv) Located in a neighborhood or area not generally less desirable than that in which the acquired dwelling was located.

(v) Reasonably accessible to public services and the displaced person's place of employment.

(vi) Available on the private market.

(vii) Open to persons regardless of race, color, religion or national origin in a manner consistent with Title VIII of the Federal Civil Rights Act of 1968 (42 U.S.C.A. § 3601 et seq.) and the Pennsylvania Human Relations Act (43 P. S. §§ 951—962) and regulations promulgated under those acts.

(viii) Within the financial means of the displaced person.

Decent, safe and sanitary—A replacement dwelling is decent, safe and sanitary if it meets the following standards:

(i) It conforms with local building and occupancy codes.

(ii) It has a continuing and adequate supply of potable water.

(iii) It has a kitchen, which contains a sink connected to hot and cold running water, an adequate sewage system, space for a refrigerator and a utility connection.

(iv) It has an adequate heating system to maintain a 70°F or 21.1°C temperature in the living area not including bedrooms.

(v) It has a bathroom, which is well lighted and ventilated, private, containing a basin and a bathtub or stall shower connected to an adequate supply of hot and cold running water, and a flush closet, all in working order and connected to a properly functioning sewage disposal system.

(vi) It has a safe and adequate electric system.

(vii) It appears to a knowledgeable person to be structurally sound, weather-tight, in good repair and adequately maintained.

(viii) It has a safe means of egress to open space at ground level. For multifamily buildings, each unit has access either directly or through a common corridor. For three or more story buildings, the common corridor shall have at least two means of egress.

(ix) It has habitable floor space, which contains 150 square feet of habitable floor space for the first occupant and at least 100 square feet for each additional occupant or 70 square feet for mobile homes.

(x) Rooms are adequately ventilated. The habitable floor space is divided into sufficient rooms so as to be adequate for the family, particularly with regard to bedrooms.

Displaced person—A condemnee or other person not illegally in occupancy of real property who moves his personal property as a result of the acquisition for a program or project of the real property, whole or in part, or as the result of written notice from the acquiring agency of intent to acquire or order to vacate the real property; and solely for the purpose of section 601-A(a), (b)(1) and (4) of the act (26 P. S. § 1-601A(a), (b)(1) and (4)), as a result of the acquisition or written notice of intent to acquire or order to vacate other real property on which the person conducts a business or farm operation. For the purpose of computing payments under Article VI-A of the act (26 P. S. §§ 1-601A—1-606A) and the provisions of this chapter, members of a family shall be collectively regarded as a single displaced person.

Dwelling—A single-family building, a single-family unit in a multifamily building, a unit of a condominium or cooperative housing project, a mobile home or other residential unit which is the established, fixed, permanent or ordinary dwelling place of residence of a person, as distinguished from temporary and transient, though actual, place of residence. It is a person's legal residence as distinguished from a temporary place of abode; or a person's home, as distinguished from a place to which business or pleasure may temporarily call a person. In instances where the place of permanent and usual abode may be in question, consideration should be given, but not limited to, the following indicia of permanent residency:

- (i) The location in which a person is legally registered to vote.
- (ii) The location which a person declares to be his residence and for the purpose of registration of his automobile and for the payment of Federal, State and municipal or local taxes.
- (iii) The location in which the dependent children reside and attend the schools located within their assigned school districts.

Family—Two or more displaced persons, one of whom is the head of a household, plus all other individuals regardless of blood or legal ties who live with and are considered a part of the family unit. If two or more individuals

occupy the same dwelling with no identifiable head of a household, they shall be treated as one family for replacement housing payment purposes.

Farm operation—An activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing the products or commodities in sufficient quantity to be capable of contributing materially to the support of the operator.

Loss of existing patronage—A decrease in net earnings.

Original cost of personal property to the displaced person—The amount paid by the displaced person for the personal property, as indicated in his business records. In the event of personal property which was obtained without cost or for which there are no records, the replacement cost of equivalent property at the time of sale shall be used.

Personal property—A tangible property not considered to be real property for purposes of general damages under the laws of the Commonwealth.

Program or project—A program or project undertaken by or for an acquiring agency as to which it has the authority to exercise the power of eminent domain.

Reasonable cost of a comparable replacement dwelling—The actual amount paid by a displaced person for a decent, safe and sanitary replacement dwelling or the amount determined to be necessary for the purchase of a comparable replacement dwelling, whichever is the lesser.

Replacement cost of equivalent property at the time of sale—The current market cost, including delivery and installation costs, of similar personal property, considering such factors as physical and economic depreciation and functional obsolescence.

Replacement dwelling—A dwelling purchased or rented and occupied by a displaced person as a result of the acquisition for a program or project of an acquired dwelling occupied by the displaced person, or as the result of written notice from the acquiring agency of intent to acquire or order to vacate the acquired dwelling.

Value in place of personal property—The value the personal property would have, installed in real property housing a going business, considering such factors as original cost, delivery and installation costs, physical and economic depreciation and functional obsolescence.

Source

The provisions of this § 151.1 amended through June 20, 1980, effective June 21, 1980, 10 Pa.B. 2463. Immediately preceding text appears at serial page 18858.

Notes of Decisions*Value in Place*

The trial court erred when it determined that a retail jewelry business's inventory had "value in place," where the inventory, i.e., jewelry for retail sale, can easily be moved without substantially destroying or diminishing its value. *MS Jewelers, Inc. v. Redevelopment Authority of the City of Philadelphia*, 725 A.2d 1245 (Pa. Cmwlth. 1999); appeal denied 747 A.2d 372 (Pa. 1999).

§ 151.2. Purpose.

The provisions of this chapter have been promulgated to insure the following:

(1) That payment of special damages for displacement, authorized by Article VI-A of the act (26 P. S. §§ 1-601A—1-606A) shall be made in a manner which is fair and reasonable, and as uniform as practicable.

(2) That displaced persons making proper application for a payment authorized for those persons under Article VI-A of the act (26 P. S. §§ 1-601A—1-606A) shall be paid promptly after a move or, in hardship cases, be paid in advance.

(3) That persons aggrieved by a determination as to eligibility for a payment authorized by Article VI-A of the act (26 P. S. §§ 1-601A—1-606A), or the amount of a payment, may elect to have their applications reviewed by the head of the acquiring agency or his designee.

(4) That displaced persons shall receive the maximum payments authorized by Article VI-A of the act (26 P. S. §§ 1-601A—1-606A).

(5) That each acquiring agency may obtain the maximum Federal reimbursement for relocation payment and assistance costs authorized by Federal statute.

Notes of Decisions*Special Damages*

This section allows a condemnee to elect to negotiate first with the acquiring agency in an attempt to settle issues of eligibility for or regarding the amount of special damages but does not preclude the condemnee from petitioning for an appointment of viewers. *Bernotas v. Chester County Water Resources Authority*, 555 A.2d 309 (Pa. Cmwlth. 1989).

§ 151.3. Scope of recoverable damages.

Except as provided in § 151.4 (relating to moving and related expenses) damages for dislocation are recoverable only under Article VI-A of the act (26 P. S. §§ 1-601A—1-606A) and this chapter which together, are intended to implement the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C.A. §§ 1415, 2473, 3307, 4601, 4602, 4621—4638 and 4651—4655). Damages are not recoverable under this act.

§ 151.4. Moving and related expenses.

The following provisions shall govern the award of moving expenses and damages:

(1) An acquiring agency may adopt the moving expense allowance schedule of the Department of Transportation of the Commonwealth for the purposes of section 601-A(a)(2) of the act (26 P. S. § 1-601A(a)(2)).

(2) Damages payable under section 601-A(a) of the act (26 P. S. § 1-601A(a)) are attributable to personal property which a displaced person moves from the acquired premises.

(i) The distance of a move of 50 miles or less shall be presumed to be reasonable.

(ii) A displaced person shall have the burden of proving the reasonableness of a move of more than 50 miles.

(3) Damages payable under section 601-A(b)(1) and (2) of the act (26 P. S. § 1-601A(b)(1) and (2)) are ordinarily attributable to personal property which a displaced person does not move from a business or farm which is acquired or dislocated.

(i) A displaced person may claim damages for some items of personal property based on the cost which would have been incurred if the property had been moved and damages for other items based on their value in place, but only if the latter items cannot be moved without substantially destroying or diminishing their value, whether because of the unavailability of a comparable site for relocation or otherwise, or without substantially destroying or diminishing their utility in the relocated business or farm operation.

(ii) If the displaced person chooses to forego damages under section 601-A(b)(1) of the act (26 P. S. § 1-601A(b)(1)), he may claim damages for the unmoved personal property under section 601-A(b)(2) of the act (26 P. S. § 1-601A(b)(2)) determined as follows:

(A) The displaced person has the responsibility of selling the personal property at a commercially reasonable public or private sale, which sale may not be held until after 60 days notice to the acquiring agency.

(B) The original cost of each item of personal property is compared with the cost of replacing it with equivalent property in the marketplace to determine which is the lower figure.

(C) The net sale proceeds are subtracted from the sum of the lower figures determined in clause (B).

(D) The total damages payable under this subsection is the lesser of 1/2 of the result derived from the procedures set forth in clause (C) or \$10,000.

(iii) Personal property for which damages are paid under section 601-A(b)(1) of the act (26 P. S. § 1-601A(b)(1)) becomes the property of the acquiring agency and may be disposed of by the acquiring agency by sale or otherwise.

(iv) Where actual direct losses with reference to personal property are measured by the reasonable expenses which would have been required to

relocate the personal property, payment will not exceed the replacement cost of equivalent property, taking into consideration the age and condition of the property.

(4) Damages under section 601-A(b)(3) of the act (26 P. S. § 1-601A(b)(3)) are payable to a displaced person whose business cannot be relocated without a substantial loss of existing patronage, based on a consideration of pertinent circumstances including the factors as the type of business conducted, the nature of the clientele and the relative importance to the displaced business of its present and proposed location.

(i) To be eligible for payment under this section, the business shall contribute materially to the income of the displaced owner.

(ii) Separate legal entities will not each be entitled to a payment under this subsection, if they actually constitute only one business. In determining whether two or more legal entities constitute a business, the following factors, among others, shall be taken into consideration:

(A) The extent to which the same premises and equipment are shared.

(B) The extent to which substantially identical or intimately interrelated business functions are pursued and business and financial affairs are commingled.

(C) The extent to which the entities are held out to the public, and to those customarily dealing with the entities, as one business.

(D) The extent to which the same person or closely related persons own, control or manage the affairs of the entities.

(iii) In the case of a nonprofit organization, the term “existing patronage” includes the membership persons, community and clientele served or affected by the activities of the nonprofit organization.

(iv) To be eligible for payment under section 601-A(b)(3) of the act (26 P. S. § 1-601A(b)(3)) a business shall occupy the premises from which it is displaced.

(A) [Reserved].

(B) Payment to an owner-occupant under section 601-A(b)(3) of the act (26 P. S. § 1-601A(b)(3)) shall be calculated on the basis of the fair monthly rental value of the portion of the premises occupied by the owner-occupant and used for business purposes. No payment will be made for the portion of the premises rented to one or more tenants.

(C) Payment to a tenant under section 601-A(b)(3) of the act (26 P. S. § 1-601A(b)(3)) shall be calculated on the basis of the rental being paid by the tenant for the portion of the premises occupied and used for business purposes by the tenant. No payment will be made for the portion of the premises rented to one or more subtenants.

(v) To be eligible for payment under this subsection, a displaced person shall make available to the acquiring agency copies of applicable Federal,

State and local tax returns, and shall allow the acquiring agency to examine applicable books and records.

(vi) In the case of a business which relocates, loss of existing patronage shall be determined by comparing the average net earnings at the new location during a period of at least 6 months with the average net earnings during the 2 taxable years immediately preceding the taxable year in which the business is dislocated, or the applicable period provided for in paragraph (6).

(vii) In calculating damages according to the rental formula, the cost or value of utilities, such as heat, electricity, gas, water and sewer, shall be excluded from rental or rental value.

(5) A displaced farm operation is eligible for damages under section 601-A(b)(3) of the act (26 P. S. § 601A(b)(3)) if:

(i) The farm operator has discontinued (or relocated) his entire farm operation at the acquired property.

(ii) In the case of a partial taking, the property remaining after the acquisition is no longer capable of supporting a farm operation having substantially the same economic production.

(6) In determining whether damages are payable under section 601-A(b)(3) of the act (26 P. S. § 1-601A(b)(3)) and the amount of the damages, a period other than the 2 years immediately preceding the taxable year in which a business or farm operation moves from the acquired property may be used to determine the existing patronage and average annual net earnings of the business or farm operation in the following circumstances:

(i) If a business or farm has not been in continuous operation at the acquired property for 2 full years immediately preceding the taxable year in which the business or farm operation moves therefrom, but has been in continuous operation there for at least 1 year, the existing patronage and average annual net earnings may be determined by dividing the existing patronage and net earnings for the lesser period by the number of months in the period and multiplying the quotient by 12.

(ii) If, due to the general knowledge of the imminence of condemnation, the existing patronage and average annual net earnings of the business or farm operation were substantially lower than normal during the 2 years immediately preceding the taxable year in which the business or farm operation moves from the acquired property, the existing patronage and average annual net earnings shall be based on the 2 years immediately preceding the taxable year in which knowledge of the imminence of condemnation became general. If the business or farm was not in operation at the acquired property for 2 full years preceding the latter taxable year, but was in continuous operation there for at least 1 year, the existing patronage and average annual net earnings shall be determined by dividing the earnings for the lesser period by the number of months in the period and multiplying the quotient by 12.

(iii) If a business or farm operation was damaged by fire, flood or other disaster, whether natural or otherwise, in the 2-year period immediately preceding the taxable year in which the business or farm operation moved from the acquired property, the existing patronage and average net earnings shall be based on the 2 years immediately preceding the year of the disaster.

(7) The burden of reasonableness shall be met in accordance with the following:

(i) In proving damages for reasonable expenses incurred in searching for a replacement business or farm under section 601-A(b)(4) of the act (26 P. S. § 1-601A(b)(4)), a displaced person shall have the burden of proving the reasonableness of expenses in excess of \$500, and of expenses incurred in searching more than 50 miles from the acquired property. The owner of a displaced advertising sign shall have the burden of proving the reasonableness of expenses in excess of \$100 incurred in searching for a single replacement site, and in excess of \$500 incurred in searching for replacement sites for signs displaced by a single project.

(ii) Eligible expenses under section 601-A(b)(4) of the act (26 P. S. § 1-601A(b)(4)) include transportation expenses, meals, lodging away from home, and the reasonable value of time actually spent in search, including the fees of real estate agents or real estate brokers. Expenses claimed except the value of time actually spent in search shall be supported by receipted bills. Payment for time actually spent in search shall be based on the applicable hourly wage rate for the person conducting the search, but may not exceed \$10 per hour.

(8) Reasonable costs incurred in adapting a replacement business property for the installation of machinery, equipment and fixtures necessary for the operation of the displaced business in order to conform to health, safety or other legal requirements are reimbursable as moving expenses under section 601-A(a) of the act (26 P. S. § 1-601A(a)) if the acquired business property was not required to and did not conform to the requirements and damages were not paid to the owner or tenant of the acquired property based on a nonconforming use.

Source

The provisions of this § 151.4 amended through June 20, 1980, effective June 21, 1980, 10 Pa.B. 2462. Immediately preceding text appears at serial pages (18861) and (23367).

Notes of Decisions

Dislocation Damages

The period relevant for the determination of whether a substantial loss of existing patronage occurred is not the calendar year of the relocation, but rather a period of at least six months at the new location; and, if the business enjoyed an increase in net earnings during that period, dislocation damages cannot be awarded. *Eisenberg v. Redevelopment Authority*, 386 A.2d 163 (Pa. Cmwlth. 1978).

When the only “loss” suffered by relocation of a business was that of specific individual customers who were immediately replaced in greater numbers by other customers at the new location, there was no loss in earnings upon dislocation and the business is not entitled to dislocation damages. *Neumann v. Department of Transportation*, 372 A.2d 1240 (Pa. Cmwlth. 1977).

Moving Expenses

A horse business and a hay growing and cattle operation constitute only one business for moving expense purposes if the same persons own, control and manage both businesses, the same land was shared by both businesses, the income from both businesses was reported in combined form on federal income tax returns, the income and expenses of both businesses were credited and debited to the same account, the horse business was the only one held out to the public, and the hay was grown to feed the horses while the cattle were raised mostly for the personal use of the owners. *Baker v. County of Allegheny*, 412 A.2d 190 (Pa. Cmwlth. 1980).

Occupancy

Occupancy requires more than mere right to possess or control property.—the right must actually be exercised. *Redevelopment Authority v. Stepanik*, 360 A.2d 300 (Pa. Cmwlth. 1976).

Owner-Occupant

A property owner rented out part of the property as apartments, but had a bar and restaurant in part of the property, from which he lived upstairs, he was properly awarded business location damages, since such damages were based only on that portion of the property for which the owner qualified as an “owner-occupant” *Redevelopment Authority v. Legosh*, 394 A.2d 1089 (Pa. Cmwlth. 1978).

Relocation Damages

Tax returns for the two years immediately before and for one year immediately following the relocation of a business were admissible to prove that the business had prospered by the relocation and was not entitled to relocation damages. *Neumann v. Department of Transportation*, 372 A.2d 1240 (Pa. Cmwlth. 1977).

Search Expenses

Search expenses may be justified by production of a list of places visited, the distances traveled, and the dates of visits, and, if an hourly wage rate is not applicable, a daily wage rate may be substituted. *Baker v. County of Allegheny*, 412 A.2d 190 (Pa. Cmwlth. 1980).

If a condemnee occupies the property condemned both as a residence and as a place of business and suffers damages in the condemnation, the condemnee may be eligible for damages related to each aspect of the dislocation. If the unit occupied by the condemnee is a place of business and if the fair monthly rental value of that unit is in excess of \$2500, the condemnee would be eligible for the \$10,000 maximum amount of special dislocation damages allowed by 26 P. S. § 1-601A(b)(3). *Department of Transportation v. Gaylor*, 448 A.2d 656 (Pa. Cmwlth. 1982).

Validity

The provisions of 37 Pa. Code § 151.4 (relating to moving and related expenses) are valid since it complies with the intent of the Legislature, as expressed in 26 P. S. § 1-601A(b)(3), to deny special dislocation damages to landlords not physically occupying the premises condemned. *Redevelopment Authority v. Stepanik*, 387 A.2d 1292 (Pa. 1978).

The provisions of 37 Pa. Code § 151.4 (relating to moving and related expenses), formerly § 103.4(d) of the Uniform Relocation Assistance Regulations, was held to be consistent with 26 P. S. § 1-601A(b)(3), and not to be in derogation of an owner’s statutory rights in the determination of dislocation allowances. *Redevelopment Authority v. Stepanik*, 360 A.2d 300 (Pa. Cmwlth. 1976).

Cross References

This section cited in 37 Pa. Code § 151.3 (relating to scope of recoverable damages).

§ 151.5. Replacement housing for homeowners.

(a) If a displaced person purchases and occupies a decent, safe and sanitary dwelling at a price less than the reasonable cost of a comparable replacement dwelling, the amount of damages payable under section 601-A(a)(1) of the act (26 P. S. § 1-601A(a)(1)) shall be determined by using the actual cost rather than the reasonable cost of a comparable replacement dwelling. Reasonable costs of rehabilitating a replacement dwelling in order to make it decent, safe and sanitary and comparable to the acquired dwelling with respect to size and state of repair shall be included in calculating the actual cost.

(b) The amount necessary for the purchase of a comparable replacement dwelling may be determined by analyzing probable selling prices of comparable dwellings available on the market; by reference to a schedule prepared on the basis of an analysis; or in some other meaningful manner.

(c) If a displaced person purchases or retains a dwelling and moves it to another location, the displaced person shall be entitled to a payment under section 601-A(a)(1) of the act (26 P. S. § 1-601A(a)(1)) in the amount by which the acquisition cost of his acquired dwelling, including its site, is exceeded by the sum of the following:

(1) The purchase price paid for the replacement dwelling.

(2) The reasonable cost of acquiring a comparable replacement site, or, if the dwelling is moved onto other land owned by the displaced person, the fair market value of a comparable replacement site on the land. If the dwelling is moved onto the unacquired portion of property acquired in part for a program or project, the fair market value of the comparable replacement site shall be based on the after-value of the unacquired property.

(3) The reasonable cost of construction of a new foundation.

(4) The reasonable cost of moving the dwelling.

(5) The reasonable cost of connecting utilities.

(6) The reasonable cost of the improvements as are necessary to make the dwelling decent, safe and sanitary.

(7) The reasonable cost of restoring the dwelling to a condition comparable to its condition before the move; provided, however, that the total payment will not exceed the reasonable cost of a comparable replacement dwelling.

(d) If the acquired dwelling unit occupied by a displaced person is part of a structure owned by the person which also included space used for nonresidential purposes, that is, mixed-use property, the amount of damages payable under section 601-A(a)(1) of the act (26 P. S. § 1-601A(a)(1)) shall be determined by using as the acquisition payment of the dwelling unit only that part of the total payment which relates to the value of the residential use portion of the structure. Likewise, if the replacement dwelling unit is part of a structure which includes

space used for nonresidential purposes, the amount of damages payable under section 601-A(a)(1) of the act (26 P. S. § 1-601A(a)(1)) shall be determined by using as the cost of the replacement dwelling only that part of the total cost which relates to the value of the residential use portion of the replacement structure.

(e) If the acquired dwelling unit occupied by a displaced person is located on a parcel of land owned by the person which is substantially larger than a normal home site, the amount of damages payable under section 601-A(a)(1) of the act (26 P. S. § 1-601A(a)(1)) shall be determined by using as the acquisition payment of the dwelling unit only that part of the total payment which relates to the value of the residential use portion of the parcel. Likewise, if the replacement dwelling unit is located on a parcel of land which is substantially larger than a normal home site, the amount of damages payable under section 601-A(a)(1) of the act (26 P. S. § 1-601A(a)(1)) shall be determined by using as the cost of the replacement dwelling only that part of the total cost which relates to the value of the residential use portion of the replacement parcel.

(f) The acquiring agency may, for good cause, extend the time within which a displaced person shall purchase and occupy a replacement dwelling in order to qualify for replacement housing for homeowners under section 602-A of the act (26 P. S. § 1-602A).

Source

The provisions of this § 151.5 amended March 2, 1973, effective March 3, 1973, 3 Pa.B. 411.

Cross References

This section cited in 37 Pa. Code § 151.7 (relating to replacement housing down payment).

§ 151.6. Replacement rental housing.

Damages payable under section 603-A(a)(1) of the act (26 P. S. § 1-603(A)(a)(1)) are determined by subtracting from the amount necessary to rent a comparable decent, safe and sanitary dwelling for the next 4 years the following amount:

- (1) The average monthly rental paid by the relocated individual or family during the last 3 months multiplied by 48.
- (2) If the average monthly rental is not reasonably equal to market rentals for similar dwellings, or if the displaced person or family owned the acquired dwelling, 48 times the economic rent.
- (3) If the average monthly rental being paid by a displaced person or family, or, in the case of an owner the fair rental value, not including rent supplements paid by public agencies, exceeds 25% of the monthly gross income of the person or family, 12 times the average monthly gross income of the person or family.

Source

The provisions of this § 151.6 amended through August 29, 1975, effective August 30, 1975, 5 Pa.B. 2262. Immediately preceding text appears at serial page (11024).

§ 151.7. Replacement housing down payment.

If a displaced person who is not eligible for a payment under section 602-A of the act (26 P. S. § 1-602A), or who elects the benefits available under section 603-A of the act (26 P. S. § 1-603A), purchases or retains a dwelling and moves it to another location, the displaced person shall be entitled to a payment under section 601-A(a)(1) of the act (26 P. S. § 1-601A(a)(1)), in an amount not to exceed the sum of § 151.5(c)(1)—(7) (relating to replacement housing for homeowners) provided:

- (1) The total payment will not exceed \$4,000.
- (2) The displaced person shall equally match the amount of the payment which exceeds \$2,000.
- (3) The full amount of the payment must be applied to the expenditures enumerated in § 151.5(c)(1)—(7).

§ 151.8. Time and conditions of payment.

(a) No payment of damages under sections 602-A and 603-A of the act (26 P. S. §§ 1-602A and 1-603A) shall be made unless the displaced person or family is occupying and, except in the case of damages under section 603-A(a)(1) of the act (26 P. S. § 1-603A(a)(1)) has purchased decent, safe and sanitary replacement housing.

(1) Upon the request of the displaced person, and if necessary to expedite the purchase or rental of a replacement dwelling, the acquiring agency shall pay the agreed amount of damages or, if there is no agreement as to the amount due, make a *pro tanto* payment in the amount of its estimate of the damages in advance of occupancy or purchase of the replacement dwelling.

(2) However, in that event, payment will be made jointly to the displaced person and a lending institution, title company, the seller or similar party in order to assure that the funds are available and used exclusively for settlement of the replacement dwelling.

(b) In order to assure equitable determination of damages payable under Article VI-A of the act (26 P. S. §§ 1-601A—1-606A), final determination of damages will not be made until the displaced person, family, business or farm operator has purchased or rented a replacement dwelling, business or farm. This paragraph does not apply, however, where the business or farm operation is discontinued.

(c) Claims for damages for displacement shall be filed within the 18-month period beginning on the date on which the displaced person receives final payment of the full acquisition cost for his acquired property, if any, or on the date on which he moves or moves his property from the acquired property, whichever

is the later date; provided, however, that the acquiring agency may extend the time for filing for good cause.

Notes of Decisions

Unless there is a demonstrated need for ready access of funds for condemnees who must borrow money to acquire replacement real estate, condemnees are not entitled to funds to be used in making down payments on replacement dwellings. *Baker v. County of Allegheny*, 412 A.2d 190 (Pa. Cmwlth. 1980).

§ 151.9. Eligibility for special damages for displacement.

Eligibility for special damages for displacement under Article VI-A of the act (26 P. S. §§ 1-601A—1-606A) is limited to persons, families, businesses and farm operations displaced on or after January 2, 1971.

(1) Persons, families, businesses and farm operations displaced prior to January 2, 1971, are eligible for the special damages for displacement as were provided in sections 608—610 of the act (26 P. S. §§ 1-608—1-610) and sections 614—618 of the act (26 P. S. §§ 1-614—1-618) (Repealed) prior to the December 29, 1971, amendment or by sections 304.1—304.7 of the State Highway Law (36 P. S. §§ 670-304.1—670-304.7) (Repealed).

(2) Persons, families, businesses or farm operations displaced on or after January 2, 1971, and no later than December 29, 1971, are eligible for the greater of any item of special damages for displacement now provided in the act or previously provided in the act or the State Highway Law (36 P. S. §§ 670-304.1—670-304.7) (Repealed).

(3) Eligibility for the special damages for displacement shall be without regard to a final disposition made of a claim for the damages under prior law.

§ 151.10. Contingent attorney fees.

In order to assure that displaced persons actually receive the maximum amount of special damages for dislocation payable under Article VI-A of the act (26 P. S. §§ 1-601A—1-606A), the amount of the damages offered to a displaced person by an acquiring agency on its own initiative shall not be considered as damages paid to the displaced person for the purpose of determining the amount of a contingent attorney fee. This paragraph applies, not only to the original offer made by the acquiring agency to the displaced person, but to a subsequent increase in the offer initiated by the acquiring agency, whether made before or after the displaced person engaged the attorney's services; provided, however, that this paragraph will not apply to an original or increased offer or payment obtained as a direct result of the attorney's services on behalf of the displaced person.

§ 151.11. Information and advice about special damages.

(a) In order to assure that each displaced person receives the maximum payments to which he is entitled under Article VI-A of the act (26 P. S. §§ 1-601A—1-606A) the acquiring agency shall:

(1) Provide each potential displaced person with an information statement outlining the payments to which he may be entitled under the act at the earliest possible date prior to displacement.

(2) Make available at a reasonably convenient place, and at times which shall include hours other than normal working hours, a responsible person who can provide information and advice to displaced persons regarding the payments to which they may be entitled.

(3) Make available to displaced persons assistance in filling out and filing the required claim forms for the payments to which they may be entitled.

(b) In addition to outlining available benefits, the information statement shall contain the name, address, telephone number and hours of availability of the responsible person who can be contacted regarding the benefits, and shall outline the grievance procedure for appeal of a disagreement regarding the benefits, established in accordance with § 151.12 (relating to grievance procedures).

§ 151.12. Grievance procedures.

(a) Each acquiring agency shall establish a grievance procedure whereby the head of the acquiring agency or his designee shall hear the grievances of displaced persons regarding the acquiring agency's determination of their eligibility for or the amount of an item of special damages for displacement.

(b) Delegation of authority to hear appeals shall be in writing and shall be available for examination by the appellant. The authority will not be delegated below the level of the supervisor of the employe who made the initial determination.

(c) An aggrieved displaced person shall have the opportunity for a prompt hearing at a reasonably convenient time and place, or may appeal in writing, at his option.

(d) An aggrieved displaced person shall have the right to be represented by counsel and to present evidence, including evidence of comparable replacement dwellings, moving expenses and other matters bearing on special damage for displacement.

(e) The appeal shall be disposed of promptly, and the results conveyed to the appellant in writing.

Cross References

This section cited in 37 Pa. Code § 151.11 (relating to information and advice about special damages).

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