

CONSTRUCTION PROCEDURES HANDBOOK

SECTION VI	SUBSECTION B	DATE
CONSTRUCTION OPERATIONS	RIGHT-OF-WAY	11/29/2022

DEFINITIONS:

Agreement of Sale - A written contract whereby the purchaser consents to acquire certain real property and the seller consents to convey that property upon terms and conditions as set forth in the Agreement.

Condemnation - The acquisition of private property for a public purpose, under the power of Eminent Domain and just compensation, if it is determined that the property cannot be acquired by agreement.

Right to Possession - The right to immediate and exclusive possession and title of the property described in the declaration of taking shall vest in the condemning agency upon the filing of said declaration of taking, the depositing of the estimated compensation with the clerk of the Court and service of the papers of the condemned. The Court may stay the taking of possession of the property or authorize possession to be taken upon prescribed conditions.

Right of Entry - A document executed by the owner of real property permitting the State to enter upon his property in advance of the acquisition of his property by the State.

Possessory Action - The legal action instituted by the owner of real property to evict an occupant from the property.

Affidavit - A notarized statement supporting a motion in court. The Contractor and/or the RE submit affidavits to support motions for "possession" and "specific performance". The type of affidavit required is determined by the Division of Law. (See Samples below)

Encroachment - An obstruction (e.g., a building, driveway, sign, parking lot) that intrudes upon the public Right-of-Way (ROW).

Writ of Execution - A court order that authorizes and directs the proper office of the court (usually the sheriff) to carry into effect a judgment or decree of possession.

NOTE: For federal projects, all ROW must be available prior to FHWA authorization unless waived where appropriate under 23 CFR § 635.309. For 100% State funded projects, ROW availability dates may be included in the specifications and accounted for in the construction schedule. The RE must receive the Preconstruction ROW checklist, which provides a summary of key ROW items prior to the preconstruction conference, supplied either by the RCE or the PM. In addition, the District ROW office will provide the name of a ROW staff member to contact should the RE have any questions. This individual will also be a point of contact should the RE determine that any of the following documents are needed relative to a specific parcel or property:

1. Agreement of Sales
2. Right of Entry
3. Declaration of Taking/Deeds
4. Copy of Notice Appointing Commissioners
5. Certificates of Possession
6. Release of Buildings (e.g., Utility, and asbestos survey plans)
7. Right-of-Way Plans

If the documents are not received by the RE, the project's FM must locate and obtain the documents. At the preconstruction conference the RE will give the Contractor one set of general property parcel and entire tract maps and inform the Contractor of any special conditions or requirements under the Real Estate agreements, including which parcels have Rights of Entry.

1. PROCEDURE FOR OBTAINING PHYSICAL POSSESSION PRIOR TO CONSTRUCTION

a. Parcels Acquired by Real Estate Agreement

If the owner/occupant fails to deliver possession of the property to the State by the latter of (a) the possession date stated in the agreement, or (b) the expiration date of the formal, written ninety-day notice to vacate, the Division of ROW will request the Division of Law to initiate an action for Specific Performance, to compel the owner to deliver possession.

b. Parcels Acquired by Condemnation

- 1) If the owner/occupant fails to deliver possession of the premises upon the expiration of the formal, written ninety-day notice to vacate, the Division of ROW will request the Division of Law to initiate a Motion for Possession before the Court.
- 2) The Court will issue an Order for Possession as of a specific date and the Division of Law will then transmit the Order to the Sheriff of the concerned jurisdiction for personal service upon the owner/occupant.
- 3) The ROW District Office will be responsible for coordinating and accomplishing all arrangements in connection with the ejection of the owner/occupant, including provision of moving van, temporary accommodations and temporary storage, as judged appropriate and necessary.
- 4) Upon vacating the premises, a "Certificate of Possession / Removal" [Form RE-7](#), will be transmitted to the RE.

2. PROCEDURE FOR OBTAINING PHYSICAL POSSESSION DURING CONSTRUCTION:

a. When the Contractor is denied entry or access to a parcel:

- 1) Contact the Director, ROW to determine if the State's possession is legal.
- 2) If possession is legal, the RE shall contact the Division of Law for guidance to determine if steps "c" and "d" should be taken.
- 3) When the Contractor is unable to enter or continue work on a parcel, the RE will obtain an Affidavit from the Contractor citing the need for a particular parcel for construction on forms furnished by the Department, and also complete a concurring Affidavit, and forward both to the Director, ROW, who will be responsible for initiating the possessory action through the Division of Law.
- 4) Parcels that are unoccupied may be entered by the Contractor after the writ has been served on the owner by the sheriff. Notification that the property may be entered will come from the ROW District Office through the PM to the RE.
- 5) Parcels requiring vacating or eviction of an occupied property cannot be entered until ROW has taken both legal and physical possession, issued a Certificate of Possession / Removal (Form RE-7) and transferred the keys. Release and keys will be forwarded through the RCE to the RE.

b. When Parcels are not in the State's Possession

- 1) In the event that permanent or temporary possession of a parcel, whole or in part, is required during the construction of a project and is not in the State's possession, the RE will immediately inform the FM, PM and RCE and submit, in writing, all pertinent information available (e.g., location, reason required, owner's name, address, etc.).
- 2) A written request to the Director, ROW for possession will be made by the FM.

c. Encroachments

Should a privately owned facility or appurtenance encroach on State property and the owner refuses to remove it, Regional Operations should be contacted for their action.

d. Evictions

Should eviction of persons from property within the right-of-way appear necessary, the RE should discuss the matter with the Director, ROW and then consult with the FM, PM and RCE as to any appropriate action.

SAMPLE-CONTRACTOR

Affidavit

(Current Attorney General)
 Attorney General of New Jersey
 Attorney for Plaintiff
 Richard J. Hughes Justice Complex
 25 Market Street, P.O. 114
 Trenton, New Jersey 08625

SUPERIOR COURT OF NEW JERSEY
 LAW DIVISION COUNTY
 Docket No. *will be filled in by*
Legal Division

STATE OF NEW JERSEY, By the
 COMMISSIONER OF TRANSPORTATION,
 Plaintiff,

vs.

(Name of Parcel Owner)

Defendants.

STATE OF NEW JERSEY)
) ss.
)
 COUNTY OF *where affidavit*
will be sworn to

) CIVIL ACTION
) AFFIDAVIT IN SUPPORT OF
) MOTION FOR POSSESSION
)
)
)
)
)
)

(Name of Contractor's man who will swear to this) , being duly sworn, deposes
 to this Affidavit.

and says:

AFFIDAVIT

SAMPLE

FOR INSTRUCTIONAL PURPOSES ONLY

1. I am *Donald Ahern* of *Johnson Contracting Company*, which has a contract with the plaintiff dated **March 10, 2006**, for the construction Route 100, Contract Number 095990580 which includes the premises involved in this suit which are known as Parcel 55A.

2. Construction has reached the stage where it is necessary to obtain above premises not later than *June 1, 2006* in order to comply with the terms of the contract above mentioned.

3. Failure to obtain possession of the premises, by the date mentioned above, will result in delays of performance of work under the contract and upset our planned performance procedure. Such delays will result in our having to make claims against the plaintiff for whatever damages are sustained.

Sworn and subscribed before me
this *1st* day of
May, 2006

Signature

Notary Public of New Jersey

**SAMPLE - RE AFFIDAVIT
Affidavit**

(Current Attorney General)
Attorney General of New Jersey
Attorney for Plaintiff
Richard J. Hughes Justice Complex
25 Market Street, P.O. 114
Trenton, New Jersey 08625

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION COUNTY
Docket No. *will be filled in by
Legal Division*

STATE OF NEW JERSEY, By the
COMMISSIONER OF TRANSPORTATION,
Plaintiff,

vs.

(Name of Parcel Owner)

Defendants.

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) CIVIL ACTION
) AFFIDAVIT IN SUPPORT OF
) MOTION FOR POSSESSION
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STATE OF NEW JERSEY)
) ss.
)

COUNTY OF *where Affidavit
will be sworn to*

(Name of RE who will swear to this), being duly sworn, deposes
to this Affidavit.

and says:

AFFIDAVIT
SAMPLE

FOR INSTRUCTIONAL PURPOSES ONLY

1. I am the RE for the Department of Transportation for the construction of Route 100, Contract Number 095990580 which includes the premises involved in this suit which are known as Parcel SSA
2. I have read the affidavit made by the Johnson Contracting Co. Contractor and the statements therein are true to the best of my knowledge.
3. Access to subject parcel number is needed by the date requested by the Contractor or progress of the project will be impeded to the extent that the State may be subject to claims by the Contractor for costs due to delay.

Sworn and subscribed before me
this *2nd* day of
May, 2006

Signature

Notary Public of New Jersey