



## 342 FW 3 *Negotiations*

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**3.1 What is the purpose of this chapter?** This chapter describes the requirements and procedures that negotiators must follow when negotiating or preparing contracts to acquire lands and interests in lands to carry out Service programs. It also gives an overview of the different agreements to use when acquiring real property.

**3.2 What must negotiators do when negotiating for lands or interests in lands?** The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646), as amended, has certain requirements that negotiators must follow when negotiating for lands or interests in lands for Federal and federally assisted programs.

- A.** You must make a reasonable effort to expeditiously acquire the real property by negotiations.
- B.** You must advise landowners that we are interested in acquiring their real property, and that the law provides them basic protections, including our obligation to get an appraisal.
- C.** Before you initiate negotiations, an appraisal professional who represents the Service must appraise the property. Also, a review appraiser must review and approve the appraisal. (See 342 FW 1, Appraisal, and 342 FW 2, Appraisal Review).
- D.** We must establish an amount of just compensation for the real property that reflects the approved appraised value and make a prompt written offer to acquire the property for that amount. We cannot offer an amount of just compensation that is less than the appraised, reviewed, and approved market value of the property.
- E.** When you provide the written purchase offer, you must also give the landowner a written Statement of Just Compensation. It must include the amount you established as just compensation for the subject real property and a summary of how you established the amount. In the case of a partial acquisition, you must state the just compensation separately from the damages, if any, to the remaining property. You must identify any buildings, structures, and other improvements included in the offer. The Regional Director must sign the Statement of Just Compensation unless the Regional Director delegates this responsibility to the Assistant Regional Director, the Senior Regional Realty Officer or, in the case of the Waterfowl Production Area Program, the Supervisory Realty Specialist or Realty Officer.
- F.** You must make a reasonable effort to contact the owner or the owner's representative to discuss our offer to purchase the property, and to explain the basis for the Statement of

Just Compensation. You must tell the owner about our acquisition policies and procedures, including those relating to incidental expenses. You must give the owner an opportunity to consider the offer and present any materials the owner believes are relevant to determining the value of the property. You should answer any questions the owner may have about the proposed terms and conditions of the purchase agreement and give the owner an opportunity to suggest modifications. You must consider the information presented by the owner.

**G.** The Statement of Just Compensation is valid for no more than 6 months from the date of issuance. You must base the SJC on an appraisal that reflects current market value and is not more than 12 months old from its date of value. If you receive information from the owner, or if you know of a material change in the character or condition of the property that indicates the need for a new appraisal, or if the appraisal is outdated due to any extraordinary market conditions, you should have the appraisal validated or updated, or you must obtain a new appraisal, as appropriate. An appraisal professional who represents the Service must validate or update any appraisal over 12 months old at the time of issuance of the SJC. The negotiator must appropriately document the file following an appraisal update or any reissuance of an SJC. (Also see 342 FW 1.)

**H.** Following the appraisal, if you determine that the acquisition will leave the owner with an uneconomic remnant, you must offer to acquire the entire property. (See Relocation Handbook for the definition of "uneconomic remnant.")

**3.3 What are the objectives when negotiating to acquire real property?** You must strive to treat all owners impartially, always keeping in mind that you are an agent of the Federal Government and have a responsibility to protect the interests of the United States and a duty to deal fairly with each owner. You must never induce an owner to execute a purchase agreement by promising expeditious payment, employment, or by threatening condemnation.

**3.4 Who can negotiate to purchase real property?** The Regional Senior Realty Officer, or the Supervisory Realty Specialist/Realty Officer in Wetland Acquisition Offices, must negotiate or supervise negotiations for the purchase of lands or interests in lands. If one of the above assigns this responsibility to a staff member, he or she must be particularly adept at dealing with the public. You cannot be a negotiator if you do not have special training to deal with the public or do not have a thorough knowledge of Service acquisition policies and procedures. If you negotiate on the property, you cannot do the appraisal for the property. If you negotiate to acquire the property, you should avoid determining the relocation benefits for that same property. If it is necessary for you to do both, you must remain fair and neutral and consider each process independently from the other. Provide relocation information to potential displaced persons early in the negotiation process. (See Relocation Handbook.)

**3.5 How should negotiators prepare?** You must:

**A.** Be familiar with the Land Protection Plan so that you can carry out negotiations consistent with the Plan. (See [341 FW 1, Policy and Responsibilities](#), and [341 FW 2, Land Acquisition Planning](#), for additional information on Land Protection Plans.)

**B.** Be knowledgeable about the project area and the individual owners. You must prepare a land status map and assign each tract of an ownership a number. (See paragraph [3.16](#) and [343 FW 3](#)). If possible, you should also learn what you can about economic conditions, existing industry, productivity of the land, products having commercial value, etc., in the surrounding vicinity. You should review and be knowledgeable of the Realty Land Acquisition Feasibility Report prepared during the planning stage. (See [341 FW 2.](#))

**C.** Get a copy of the approved appraisal reports and other pertinent data regarding the individual tracts and the project. You must be thoroughly familiar with all the important points in the appraisal report. To ensure that you treat landowners fairly, you must keep up with changes in the market that could affect the value of the property and point out any inconsistencies to the Senior Regional Realty Officer.

**D.** Search county records and prepare abstract copies of any instruments that show the owner holds title to the lands involved. You need to note any outstanding liens of record and exceptions of title. You can find this information in an abstract of title or preliminary title insurance policy, sometimes referred to as a title insurance binder. You must have the landowner verify these liens and exceptions and reference them in the purchase agreement when appropriate. If title examination uncovers outstanding rights of way and easements that are not referred to in the purchase agreement, the Regional Director must execute a certificate concerning the rights of way, easements, and reservations. If you identify ownership under a Contract for Deed, the owners of the contract must sign the purchase agreement.

### **3.6 How should I negotiate with landowners?**

**A.** You may find that each acquisition project and each ownership within a project may represent a problem different from all others. It is impossible for us to prescribe detailed procedures where elements of human nature and diversity of physical and economic conditions are factors. Generally, however, you will find that most landowners will fall into one of the following categories: those who want to sell for various reasons; those who will sell only if the price is attractive; and those who do not wish to sell (or whom you cannot convince to sell).

**B.** If possible, you should inspect the property with the owner. You should avoid making any derogatory remarks and arguments. It is essential that you use tact and a friendly approach in negotiating. Ordinarily you should not reveal the appraisal report to the owner; however, when it would foster positive negotiations, you may choose to show the owner the appraisal report after consulting with the Senior Regional Realty Officer. You are not required to furnish a copy and should not do so. Owners generally know more about their property than anyone else, and you can expect that they will stress advantages and minimize disadvantages. You must be well informed on the subject property in order

to discuss the situation intelligently and gain the owner's confidence. (See 342 FW 1 and 2.)

**C.** If the landowner points out any mistakes in the appraisal report, you must bring it to the attention of the appraiser or supervisor for correction. You should never criticize the appraisal report or the appraiser. If you have any doubts or questions, discuss them with the appraiser or supervisor. You must have a clear understanding of the appraisal report before proceeding with negotiations.

**D.** You should negotiate for property through personal contact; however, you may contact nonresidents by telephone and/or letter, and you may use either or both methods of communication for follow-up negotiations. You should write up the complete details of each owner contact and place your notes in the case file as soon as possible after you make contact with the owner.

**E.** When you initiate negotiations, you should provide the owner with a *Relocation Assistance* brochure and explain the benefits for which they might qualify.

**F.** If the approved project and the owner's land are within a project boundary that is subject to the power of eminent domain, you must advise the owner that involuntary conversion, or the threat of condemnation, exists. Also, if a statute authorizes us to acquire property, and there is no limitation on our condemnation authority, the threat of condemnation exists and you should advise the landowner. Fee tracts in the Waterfowl Production Area program fall in this category, even though it may not be our policy to exercise this right. If the statute requires that we acquire the property from willing sellers only, no threat of condemnation exists, so you do not need to notify the landowner. If you advise the owner that involuntary conversion or the threat of condemnation exists, you must send a letter to the vendors, after acquiring the property, notifying them of your previous discussion. (See [Exhibit 1](#) for sample letter.)

**G.** You should also become familiar with the various real property interests that the Service may acquire (i.e., fee title, easement, lease, etc.). In areas where water rights are a separate ownership item, the water rights are assigned to the land and you should include them with the acquisition interest.

### **3.7 How do I make a price offer?**

**A.** The initial offer you make to the owner cannot be less than the approved appraised market value of the property. You must make the offer in writing using a Statement of Just Compensation and, whenever possible, deliver the Statement in person. When it is not possible for you to make a personal delivery, you may make the offer by registered or certified mail. (See Relocation Handbook exhibits for examples of Summary Statement and Offer of Just Compensation.)

**B.** We must offer to buy the whole property when acquisition of only a portion of the property would leave the owner with an uneconomic remnant. If the owner does not want

to sell the whole property, you may proceed with negotiations for the part the owner is willing to sell. Also, if you proceed to acquire the property through condemnation, you should only acquire the part needed.

**C.** You may negotiate the purchase price on a lump sum or per hectare (acre) basis. You should choose the approach that you use according to the local custom, size of the property, the premise of the appraisal, and reliability of the acreage estimate. Generally, landowners find a lump sum price offer more acceptable since there is no question as to the monetary amount they will receive. However, in the case of large properties where there is a real question as to the quantity of land involved, it may be more desirable for you to use the per hectare (acre) approach. In the case of tracts bordering on tidelands, rivers or meandered areas, you may want to make a lump sum offer in accordance with local custom to avoid problems concerning possible interests of States. In these cases, you should consult a Regional Land Surveyor.

**D.** If you discover there is a difference in the recorded acreage and the actual acreage as a result of a boundary survey, you must have the Regional review appraiser determine if the change in acreage will affect the final estimate of value. In such case, the review appraiser may ask the original appraiser to revisit the appraisal and determine any effects on the property's value.

**E.** It ordinarily takes longer to complete a Federal Government purchase than to complete a transaction between private parties. We can make payment only after the Attorney General approves the title. The Regional or Field Solicitor may also approve title, since the Attorney General delegated this authority to them.

**F.** Before you can purchase property using Migratory Bird Conservation Fund monies, you must get approval from the Migratory Bird Conservation Commission.

**G.** You can stress that the Federal Government pays the purchase price in full or most costs associated with the transfer. If this is a tax disadvantage to the landowner, you can arrange to pay the purchase price (without interest) over several years. If the landowner chooses installment payments, you must obligate the entire purchase price at time of acceptance. Title transfers to the United States even though we owe the landowner future payments.

### **3.8 What are the limits on the payment amounts Regional Directors may authorize?**

The Regional Director has authority to accept certain purchase agreements above the approved appraised value, but must follow the guidelines below.

**A.** The Migratory Bird Conservation Commission passed a resolution that allows us to increase the Commission-approved purchase price. The MBCC must reapprove the increased purchase price if it is over 10 percent of the approved appraised value or is for some reason that is not stated in (1), (2), and/or (3) below. The MBCC does not need to reapprove the increase if the cause of the increase is documented in a reviewed and

approved appraisal, is due to one or more of the following reasons, and is limited to no more than 10 percent of the approved appraised value:

- (1) Appraiser overlooked any elements of value when writing the original appraisal.
- (2) There was a change in value because the landowner agreed to sell additional improvements, or place additional improvements on the land after you had a current, reviewed and approved appraisal.
- (3) Land costs are higher due to an upward trend in market value.

**B.** For Land and Water Conservation Fund purchases that will exceed the approved appraised value, you must get approval in writing from both the House and Senate Committees on Appropriations. The Committees on Appropriations have requested specific information that you must include in all requests to exceed the appraised value. The Headquarters, Division of Realty will prepare the final letters to the Committees. The Realty Division will write these letters based on information submitted to the Director by the Region. You must prepare a memorandum from the Regional Director to the Director requesting approval to pay more than the appraised value. You must attach the following to the memorandum:

(1) A draft letter to the Appropriations Committee requesting approval to pay an amount over the appraised value. In the draft letter:

- (a) Identify the area, tract number, and owner's name.
- (b) Indicate the appraised value and date of the appraisal.
- (c) Name the person or agency who did the appraisal.
- (d) Provide the negotiated price and the date the option expires.
- (e) Indicate the status of the Land Protection Plan.
- (f) Give the priority and justification for the acquisition.
- (g) Summarize any other special considerations.
- (h) Summarize the funding status.
- (i) Advise what would be the consequences of "no action."

(2) Five copies of a tract location map that shows the acquisition status of the project and the subject outlined in red. You must have a proper legend on the map.

(3) Two copies of the approved appraisal report.

**C.** The Regional Director must approve a statement for the record citing the case history of negotiations and justifying the reasons for the higher price for all overpayments. Examples of reasons to accept a contract for more than the approved appraised value may be the immediate need for the land for program use, the number of contacts made, the length of negotiations, or the anticipated cost or other impact of condemnation.

**D.** You must get approval from the Director in advance of all agreements that will exceed the approved appraised value and the above delegations.

**E.** For Waterfowl Production Areas purchased under the authority of the Migratory Bird Hunting and Conservation Stamp Act in excess of the appraised value, the Regional Director can accept an option that exceeds the appraised value under the following three conditions:

**(1)** For tracts having an appraised value up to \$10,000, the Regional Director can accept an overrun of up to \$1,000.

**(2)** For tracts having an appraised value of \$10,000 to \$250,000, the Regional Director can accept an overrun of up to 10 percent.

**(3)** For tracts having an appraised value over \$250,000, the Regional Director can accept an overrun of up to \$25,000 or 5 percent of the appraised value, whichever is greater.

**F.** Before the Regional Director can accept a WPA contract for a price exceeding the appraised value, he/she must approve a statement, for the record, that cites the case history of negotiations and justifies a higher price. The Director must approve any agreement that exceeds the allowable overruns. Exercise the overrun option primarily for round-out purposes.

### **3.9 What should be done prior to condemnation?**

**A.** When you have exhausted negotiations and make a decision to recommend condemnation, you must make a final offer to the property owner(s) by certified or registered mail. You may send this letter at your discretion; however, you should not send the final offer letter until the Director approves condemnation. You must include a copy of the final offer letter when you request approval for a condemnation action. (Also see [342 FW 4](#) and [342 FW 6](#).)

**B.** The final offer letter must include: the names of all the owners (where practical); a legal description of the property including hectares (acreage); the final price offer; a statement of the interest we are acquiring; and a statement that if the owner(s) cannot reach agreement by a certain date, we will recommend acquisition by condemnation. (See [Exhibit 2](#), Sample Final Offer Letter).

**C.** After the Director approves a recommendation to proceed with condemnation, the Division of Congressional and Legislative Affairs and the Chief, National Wildlife

Refuge System (Headquarters) will consult to determine any congressional offices that they need to brief on the proposed condemnation action. The Division of Congressional and Legislative Affairs will notify the Regional Office of the decision.

**D.** In all cases, the Regional Director should send a formal letter to the appropriate members of the congressional delegation advising them that we intend to proceed with the proposed condemnation action. You should send the letters to the congressional delegation at the same time that you notify the affected property owners. Provide copies of the letters to the Division of Realty and the Division of Congressional and Legislative Affairs in Headquarters for information purposes.

### **3.10 What is a reservation and what are the types of reservations?**

**A.** A reservation is a right the vendor(s) retains on part or all of the property we are acquiring. Reservations should be as specific as possible. Reservations should not interfere with the primary purposes for which we are acquiring the land. If possible, the refuge or hatchery manager should define the types of reservations and specific conditions that are acceptable in advance. You should include all proposed reservations in the Land Acquisition Plan.

**B.** You cannot require any individual, family, business, or farm operation to move without giving them at least a 90-day written notice. (See Relocation Handbook.) It is our policy to allow short-term reservations so that resident vendors or tenants will have sufficient time to find replacement property or housing.

**C.** We do not usually discount the value for use and occupancy reservations of less than 2 years duration. When a discount is appropriate, the amount will depend on the length and character of the reservation and, for other than residences, the long-term interest rate that applies in the locality for that particular type property.

**D.** You should ensure that the life use reservation is for the use and occupancy of specific persons for residential purposes. The reservation should be for the residence, the outbuildings needed for that residence, and the amount of land that would constitute a residential lot. You should also ensure that the reservation is subject to the rules and regulations of the Secretary and any applicable zoning ordinances.

**(1)** You can provide a life use reservation for the occupancy of specific persons who occupy the property at the time of acquisition. These persons do not necessarily need to be the record title holders. You should ensure that the life use reservation is nontransferable and is for the reserver's lifetime or for a specific term of years.

**(2)** You should discount the appraised value of the buildings and land included in the reservation at the rate of 1 percent per year for the term of the reservation. For the purposes of discounting, you should use the term that will be the life expectancy of the youngest occupant as listed in actuary tables published by the Department of Health and Human Services.

**(3)** You should advise the occupant, or reserver if other than the occupant, to carry fire and casualty insurance payable jointly to him/her and the United States in a sufficient amount to repair or replace the building(s) in case of damage or destruction. Without such insurance, we are under no obligation to repair or replace such buildings.

**(4)** The occupant is responsible for the upkeep and maintenance of the reserved premises and, along with the reserver if different from the occupant, must hold the United States harmless on account of the occupancy under the reservation.

**E.** Generally, you cannot allow the reservation of hunting rights if you purchase the property in fee title. You may allow the reservation of hunting rights in cases such as donated land, easements, or a project establishment for "other management purposes" under the Migratory Bird Conservation Act. However, if you plan to acquire the land subject to the reservation of hunting rights, you must obtain the Director's prior approval.

**F.** You may allow mineral reservations if you determine that anticipated damage from development and removal would not destroy the surface value of the refuge and/or you determine that the cost to acquire the mineral rights would be prohibitive. Coal is an example where development may destroy the wildlife values of the surface (Surface Mining Control and Reclamation Act). Oil and gas are examples where the cost may be prohibitive, especially in areas where there are known oil and gas reserves. Generally, you should not allow a reservation of an undivided interest in minerals; however, there may be instances where undivided interests are outstanding in third parties and we cannot acquire them. For oil and gas, the reservation should not exceed a term of 10 to 20 years or as long thereafter as the land produces oil and gas. However, in areas with known oil and gas deposits, you may allow perpetual reservations. (See [Exhibit 3](#) for example of stipulations for oil and gas reservations on lands acquired for refuge purposes.)

**G.** You should not allow a reservation of water rights because we require water to develop and operate both migratory bird refuges and fish cultural stations. It is essential that you acquire all water and water rights appurtenant to the land.

**H.** If the owner desires to remove improvements that have no utility to Service programs, you should encourage the removal because you will save acquisition money and eliminate the cost of disposal.

**(1)** You should include in the reservation a time limit for the removal and a clause that requires the vendor to clean up and remove all debris. You should deduct only the salvage value of the improvements from the appraised value and follow standard appraisal practices in determining salvage value (use offsite value).

**(2)** The vendor must pay the cost of removing improvements because this is not an eligible moving expense. You may want to estimate the removal cost of the improvements and require the owner to place a bond, letter of credit, or surety (giving the Service the right to draw upon it) as a condition for the owner to retain (and remove) the improvements.

**I.** The principal reason you would allow a timber reservation is to reduce the cost of the land being acquired. Other reasons may be to open up forest cover to make the area more desirable for wildlife, or to save costs to us by having the vendor remove timber before acquisition, within pool or construction areas. Disadvantages are that we may experience delays before we can obtain complete control of the land, the cost of administration may increase, and we may increase the possibility of damage by fire.

**J.** We cannot hold crop contracts/allotments assigned to land we are acquiring. The landowner may not reserve these contracts/allotments, but you may want to advise the seller to contact the local Farm Service Agency office to determine if they can be reassigned to other land he/she owns or acquires.

**3.11 What is an exception?** An exception is any right or interest in land that is outstanding in third parties such as mineral rights, rights-of-way, easements, leases, etc. These outstanding rights or interests are not subject to the rules and regulations of the Secretary of the Interior. You must either waive the outstanding rights or interests of third parties as not interfering with the purpose(s) for which we are acquiring the land, or you must acquire the outstanding rights or interests from the third parties. Surface mining, however, is subject to the regulations promulgated to implement the Surface Mining Control and Reclamation Act of 1977. (See [612 FW 1](#) and [2](#).)

### **3.12 What is an encumbrance?**

**A.** An encumbrance is a lien against the title such as a delinquent tax, a mortgage or other lien that you must remove before you can pass valid title.

**B.** The Regional Land Surveyor who reviews your case may reveal another type of encumbrance resulting from illegal land use or ambiguous title. You may not accept lands into Federal ownership if they have disputed boundaries or boundaries, other than riparian, that are subject to change, unless you have prior resolution or certification from the Regional Land Surveyor. You must ensure that the boundaries in question are not subject to, or the cause of, future action against the United States.

**3.13 What agreement forms should you use?** There are a number of forms available in the Realty Offices and our Service Manual for the various types of acquisition we do.

**A.** Use Form 3-1769 (Agreement for the Purchase of Lands) when you use the Migratory Bird Conservation Act as your authority to acquire land and interests in land. The agreement includes conditions that the Migratory Bird Conservation Commission must approve the acquisition and that reservations are subject to the Secretary's rules and regulations governing the use of the land and such reservations must comply with Section 6 of the Act. (See Relocation Handbook exhibits for example of Form 3-1769.)

**B.** Use Form 3-1769B (Agreement for the Purchase of Lands (Waterfowl Production Areas)) when you use the Migratory Bird Hunting and Conservation Stamp Act as your

authority to acquire lands that we will manage as a Waterfowl Production Area. (See Relocation Handbook exhibits for example of Form 3-1769B.)

**C.** Use Form 3-1769C (Agreement for the Purchase of Lands) when you acquire lands using other authorities (for example, for endangered species, recreation, hatcheries, research stations, etc. and for specially legislated refuges). The modified Form 3-1769 does not reference a specific authority, such as the Migratory Bird Conservation Act, but allows you to add the appropriate acquisition authority to the Agreement on a case-by-case basis. (See Relocation Handbook exhibits for a sample of Form 3-1769 to modify.)

**D.** You should use Form 3-1797 (Agreement for the Exchange of Lands) when you exchange National Wildlife Refuge System lands or interests in lands for other lands or interests in lands. The agreement cites the National Wildlife Refuge System Administration Act as your exchange authority. If you exchange lands or interests in lands at hatcheries, research areas, or administrative sites that are not in the National Wildlife Refuge System, you need to modify the agreement to cite the Fish and Wildlife Act of 1956, as amended, as your acquisition authority. (See Relocation Handbook exhibits for example of Form 3-1797.)

**E.** See [Exhibit 4](#) for a sample format to exchange timber for lands.

**F.** Use Form 3-1769C when you want to lease a property for a specified amount of rent and for a specified number of years with an option to purchase the property at a specified future date for a specified price. We discourage the use of a lease purchase because the seller in a rising market is usually not satisfied with the agreed price from several years earlier. (See Relocation Handbook exhibits for example of Form 3-1769C.)

**G.** Use Form 3-1916 (Conveyance of Easement for Waterfowl Management Rights) to preserve wetland habitat in the Waterfowl Production Area Program. You can modify these easements to fit other programs (for example, conservation and grasslands easement programs) when you have the authority to acquire interests in land. Generally we use easements to preserve or protect habitat, and they are negative in nature. (See [Exhibit 5](#) for an example of a basic easement.)

**H.** There is no specific standard form of lease. You should use a lease when you want to gain control of land for our programs on a year-to-year basis. You should usually pay the market rental. You should use a lease in cases where you want to obtain control of the land for refuge use, but cannot obtain title, for example, on Indian or State lands. (See [Exhibit 6](#) for example of a basic lease.)

**I.** You should use a permit and/or cooperative agreement to gain control of land for a refuge or other program purpose from another Federal agency, a State agency, or conservation foundation. For example, when the Corps of Engineers, Tennessee Valley Authority, etc., acquires land for Federal water resource projects, we can make such land available for an overlay refuge subject to the primary project purpose. These agreements

will vary from project to project and do not require a standard form of permit and/or cooperative agreement. (See 342 FW 5 Illustrations.)

**J.** You should obtain a license when you want a temporary right for us to perform a specific act; for example, to go onto land that is not ours so we can clean out a canal or do special studies, etc. Licenses do not require a standard form. (See [Exhibit 7](#) for example.)

**3.14 What should I do after preparing the agreement?** After you prepare the agreement for execution you should ensure that it conforms with State law. For example, the number of witnesses required or the form of acknowledgment required varies among States. If you have any questions, you should discuss them with the Regional or Field Solicitor. You must make sure that you include all owners of record in the agreement. For example, when the present owner-occupant of the property is acquiring real property under a Contract for Deed and the contract sellers have not delivered the deed, you should include the contract sellers in the agreement.

**A.** When you acquire land from individuals, you should show their marital status and addresses in the body of the purchase agreement and insert the words "single," "widow," "widower," or "husband and wife," as appropriate. If more than one family group will execute the agreement, you need to clearly show the names of husbands and wives joined in matrimony. You should always use the legal name and signature of each individual. When an individual has acquired title by or is commonly known by other than his/her legal name, you should show the other name as a/k/a (also known as) or f/k/a (formerly known as) along with the legal name in order to avoid confusion. There may be some variation in the use of these terms; you should check with the Regional or Field Solicitor.

**B.** When you acquire lands from estates, you should have the executor who has the power to sell the property execute the purchase agreement. The will should designate an executor. For example, you will show on the purchase agreement "John Jones, Executor of the Estate of John Doe, Deceased," and attach a certified copy of the will to the executed agreement. You can get a certified copy of the will from the Clerk of the Court for the county in which the lands are located.

**(1)** If the will does not contain provisions for the sale of the property, you must obtain the signatures of all the legal heirs on the agreement. You must follow the same procedure when an individual dies intestate (without a will).

**(2)** If it is impossible to obtain signatures from all the heirs to an agreement (for example, where there are minors and the court has not appointed a guardian to act for them), you should obtain an order of the court authorizing the sale. You should attach a certified copy of the court order to the executed agreement. When you execute these agreements, you need to follow the same procedures as those used for individuals. After the will is probated, you follow the same procedures as you would in dealing with individual owners.

**(3)** If the court authorizes an executor or administrator to sell real estate to pay debts or for other reasons, you must attach a certificate or other document to the purchase agreement that shows the appointment is in effect on the signing date of the agreement.

**C.** When you acquire land from a corporation, the by-laws of the corporation must provide for the sale of real estate. If the by-laws authorize the sale of property, you should attach a certified copy of the by-laws to the agreement. If the by-laws of a corporation from which we are acquiring land do not provide for the sale of real estate, the corporation's board of directors must pass a resolution empowering an officer or officers--usually the president and secretary--to dispose of the lands specifically described. You must attach a certified copy of the resolution to the agreement.

**(1)** You need to get the officer or officers of the corporation designated to dispose of the real estate to execute the agreement. You need to show the corporate name above their signatures and their titles, such as president or secretary, below their signatures.

**(2)** You can generally depend on the corporation's attorney for proper completion of the agreement. However, you should carefully inspect the agreement, especially the dates, spelling, terms, and signatures. You should also examine the resolution to ensure the officers whom the corporation designated to dispose of real property are the ones who signed the agreement.

**D.** You should attach evidence of the person's authority to sign the agreement.

**(1)** For individuals, you do not need to attach evidence of their authority.

**(2)** For attorneys-in-fact, you should attach a certified copy of the power of attorney that specifically states the power to sell and convey real property.

**(3)** For guardians, you should attach a copy of the Letter of Administration and/or the court order that gives power to sell the ward's property.

**(4)** For administrators, you should attach a certified copy of the court order authorizing the sale.

**(5)** For executors, you should attach a certified copy of the Appointment of Executor and/or the court order authorizing conveyance of the land.

**(6)** For corporate officers, you need to have the corporate seal and attest by the secretary of the corporation. Also attach a copy of the by-laws and minutes of the stockholders' or directors' meeting that authorized the officer to convey the land, which the secretary certified(Corporate Resolution).

**(7)** For the County Clerk or Commissioners, you need to attach a copy of the order authorizing the Commissioners or the County Clerk to dispose of the land.

**E.** You should indicate whether the purchase price is per hectare (per acre) or lump sum.

**(1)** Where land borders on tidelands that are subject to possible rights of the State, you may be able to facilitate title approval by adding to the agreement a clause that says something similar to "In consideration of the price stated in this agreement (lump sum), the vendors agree to warrant the title to all lands above the line of mean high tide as delineated by a Fish and Wildlife Service survey, and to convey by quit claim all their right, title, and interest to all those lands below the line of mean high tide."

**(2)** In cases where more than one entity owns water rights (water shares, etc) that are assigned to the proposed acquisition, you should follow the land description with a description of the specific rights the vendor owns. As you describe these rights, you should include the date and number of the water rights certificate or license that the State Engineer issued, and the riparian rights to the land, if any. You must include in the deed to the United States all the specific water rights you listed.

**F.** You should accurately describe the land proposed for acquisition according to the public land survey(s) and/or the description in the deed that vests title to the vendor. If at all possible, you should reference the instrument and recording data whereby the vendor obtained title.

**G.** You should clearly state all reservations and exceptions. Since the agreement is a contract to purchase lands according to the terms in the agreement, you will use the same reservations and exceptions stated in the agreement in the deed of conveyance to the United States.

**H.** Reservations and exceptions in patents issued by the States, Commonwealths, or the United States of America, often appear general in form. If your investigation reveals that the patents reserve the rights to the States, Commonwealths, or the United States, you should indicate in the purchase agreement that we are acquiring title subject to these outstanding rights.

**I.** The purchase agreement form provides that either the sellers or the United States must furnish an abstract, certificate of title, or other evidence of title to the property sold. You should indicate the correct alternatives in the printed form when the sellers sign the option. You should ask sellers to furnish or loan any abstract of title or other title evidence they have in their possession for use by the United States. We will not pay for this material.

**J.** The purchase agreement shows a blank space where you should write in the option period (number of months during which the United States has the option to accept the agreement). If the case needs to go before the Migratory Bird Conservation Commission, you should allow sufficient time to present the case at the next Commission meeting and to permit the Regional Director to accept the agreement. In all cases, you need to allow sufficient time for the Regional Office to consider the agreement and to assure funds are available to obligate the purchase consideration. If you have water rights questions or

other legal questions for the Regional or Field Solicitor, you may need to allow a longer option period. You may also want to allow a longer time if you obtain the agreement toward the close of a fiscal year so that you will have sufficient time to adjust funds between Regions (MBCA funds only), or to carry the agreement into the next fiscal year.

**3.15 When and how do I cancel a contract?** Sometimes you may find it is necessary to cancel a contract that the Service has entered to acquire lands or interests in lands.

**A.** We generally expect that we will eventually protect or acquire all the land within a national wildlife refuge boundary that the Director has initially approved or the law established. If you want to cancel an enforceable contract, this is a deviation from the approval and you must have the Director's approval prior to initiating the cancellation action. After you get the Director's approval and if the action is mutually satisfactory to the seller, you can take the necessary steps to obtain the signature of the seller on a Cancellation of Contract. (See [Exhibit 8](#).)

**B.** The Regional Director can decide boundaries and cancel enforceable contracts on Waterfowl Production Area fee or easement areas where title curative problems prevent title vesting into the United States. You must document the reasons for the cancellation in the case file and include a document showing that the Regional or Field Solicitor concurs that it is in our best interest to cancel the contract. After documents are in the file and after the Regional Director approves the cancellation, and if the action is mutually satisfactory to the seller, you should take the necessary steps to get the seller to sign a Cancellation of Contract. (See [Exhibit 8](#)).

**C.** For all other areas, you should follow the same procedures as you would use for national wildlife refuges. (See [paragraph A](#) above).

**3.16 How do I manage information on land acquisitions?** To maintain good records, files and maps, you must use the Service's cross-reference filing system for managing land acquisition information. The system uses an assigned number to match a tract on the status maps (see [343 FW 3](#)) with the tract's ownership information kept in the Real Property Management Information System. Each ownership is assigned a name and number. We use the ownership name and number with the tract numbers to name a case file, which serves as the project file on a specific acquisition effort.

**A.** You will need to become familiar with the following definitions. For the purposes of this chapter:

**(1) Ownership** means all lands owned by one specific party. An ownership can consist of two or more separate parcels or tracts located within a project as well as additional lands lying outside the proposed or approved acquisition boundary; i.e., uneconomic remnants (see paragraph [3.2H](#)).

**(2) Case** means the land holdings of one ownership that we are considering for acquisition under a specific contract.

**(3) Tract** means a parcel or parcels of land in an ownership that one boundary encloses and that has no common boundary with other parcels or tracts we are acquiring in the same case. Portions of one ownership having only one corner in common are separate tracts. When a parcel lies in more than one county, each portion is a separate tract. A surveyor can break a contiguous parcel into several tracts for title reasons.

**B. How do I name an ownership?** [Exhibit 9](#) contains the standards for naming an ownership.

**C. How do I number an ownership?** [Exhibit 10](#) contains the standards for numbering an ownership.

**D. How do I number fee acquisition tracts?** [Exhibit 11](#) contains the standards for numbering tracts associated with a particular fee acquisition case. You must identify each separate tract of a case. You will use the ownership number to designate the first tract of a case.

**E. How do I number a less than fee interest in land or the right to use land?** [Exhibit 12](#) contains the standards for numbering less than fee interests in land or the right to use land. For each case, you must identify each separate interest in land or use right.

**F. What letters do I use to indicate the nature of the right to use land or the less than fee interest in land?** [Exhibit 13](#) specifies the capital letters to use to identify the use right or the specific interest in land.

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*For information on the content of this chapter, contact the Division of Realty. For more information about this Web site, contact [Krista Holloway](#) in the Division of Policy and Directives Management.*

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