



# ATTORNEYS IN THE RELOCATION ASSISTANCE PROGRAM PROCESS

How, when and why



BY MICHAEL F. YOSHIBA, ESQ.

*The purpose... is to promulgate rules to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970... (Uniform Act), with the following objectives: ...*

*(b) To ensure that persons displaced as a direct result of Federal or federally-assisted projects are treated fairly, consistently, and equitably so that such displaced persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole.... [42 U.S.C. 4601 et seq.; Subpart A, § 24.1 Purpose.]*

## Two Situations Where Attorneys Become Involved

Attorneys become involved in and can also play a key role in advising displaced persons concerning rights to relocation assistance program (“RAP”) eligibility and entitlement to benefits during the eminent domain process. Legal advisory assistance on RAP issues fall outside the scope of the eminent domain property acquisition process *because* this body of law is a creation of the United States Congress and not a part of just compensation due from takings under the Fifth Amendment to the U.S. Constitution. Over time, attorneys become involved in RAP issues in two scenarios: (1) a displaced business pursues a claim for reimbursement for costs and legal fees incurred to assist their move as “professional services” and (2) attorneys are retained to assist with preparing for the agency administrative review, and the RAP appeal process including any court challenges to the results thereafter.

### Claims for Attorney Fee RAP Reimbursement as Professional Services

The Uniform Act specifically identifies categories of various expenses as either eligible or ineligible moving and related expenses. Agencies cite Uniform Act § 24.301(h) (8) for the proposition that “[a] displaced person is *not entitled to payment for any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Agency.*” [emphasis added]



Alternatively, displaced business owners point to Uniform Act § 24.303(b). It states that expenses for actual, reasonable and necessary nonresidential “professional services” are reimbursable if performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person’s business operation including but not limited to, soil testing, feasibility and marketing studies (excluding any fees or commissions directly related to the purchase or lease of such site). Reimbursement eligibility for professional services is generally left to the discretion of the displacing agency. If the expense is deemed eligible for reimbursement, it must also be at a reasonable preapproved hourly rate. Some agencies have exercised their discretion by allowing reimbursement of some attorneys’ fees in such circumstances requiring the review of a lease agreement or sales contract and in instances where attendance and presentations at planning commissions or city council meetings were necessary. In fact, the preamble to the final revised Uniform Act rules published in 2005 provided an example of reimbursing attorneys’ fees for representation before local zoning authorities.

### Administrative RAP Appeals Process

Business owners are seldom satisfied that a displacing agency will make entitlement or eligibility findings in favor of the displaced business owners’ best interests. Even the most sophisticated displaced business owners will get easily cross-eyed trying to understand explanations of relocation assistance program benefits and limitations. Experienced RAP agents know that displaced businesses will not be reimbursed for all costs to relocate their business, they simply will not be made whole. And business owners must bear the costs of retaining any legal counsel to assist them through the RAP appeal process or in seeking to challenge any agency eligibility and entitlement decisions. The RAP appeal requirement originates from the Uniform Act. The specific appeals processes and procedures, however, are left up to each state and individual local agencies therein. Although administrative appeals of RAP eligibility and entitlement can appear somewhat informal, the processes are governed by guarantees of fundamental due process and fairness. There are two general stages of a displacing agency’s appeal process: (1) informal oral presentation before a designated agency representative and (2) written request for review and formal reconsideration before a head of the agency or specially appointed committee.

When a displaced business decides to lodge an appeal, the public entity must inform the appellant that they have the right to be represented by an attorney, to present their case by oral or documentary evidence, to submit rebuttal evidence, to conduct such cross-examination as may be required for a full and true disclosure of facts, and to seek judicial review once they the appeal process is completed and final decision has been made. Displaced businesses are encouraged to retain experienced legal counsel for representation during the RAP appeal process. Neither the Uniform Act nor state law directs agencies to automatically reimburse displaced businesses for legal costs and fees preparing for and presenting at an appeal hearing. Specifically, Section 6170 of the Title 25 California Code of Regulations states that “[a]ny aggrieved party has a right to representation by legal or other counsel at *his expense* at any and all stages of the proceedings set forth in these sections.” [emphasis added.]

### Judicial Review

Once an appeal decision is final, a displaced business that is denied entitlement to reimbursement can ask a court to set aside the decision of the hearing officer or the appeals panel. This judicial challenge to the agency appeal hearing decision is through a Petition for Writ of Mandate. The petition requests that the court review the disputed findings of the agency and evaluate the legal and sometimes factual appropriateness for the agency decisions. There is no practical way to bring these legal challenges without incurring significant legal costs and fees. The reality of court statistics reveal that these reviewing courts are disinclined to reverse the discretionary decisions of agency RAP appeals hearings.

### The Why — Final Thoughts

Most agencies that I’ve worked with invariably do everything possible to treat displaced persons fairly, consistently and equitably. This objective minimizes the necessity and cost of retaining legal counsel, from both the agency and displacee perspective. ✪



Michael Yoshiba is a shareholder in the Eminent Domain and Litigation Departments of the Los Angeles law firm, Richards, Watson & Gershon.