



## 3.6 PARCEL CLOSING PROCEDURES

This section of the Real Estate Program Manual (REPM) is specific to the real estate parcel closing process and is a supplement to Section 7.0 Payment Requests where real estate payments are explained in detail. Additional background information can be found in Wis. Stats/[Chapter 32 - Eminent Domain](#). As depicted in our WisDOT acquisition process and long winding road flowchart, there are many steps leading to a successful transaction and closing. Each action has a well-defined sequence of events that will depend on the circumstances and objectives of the project, and each will involve coordination between internal and external sources. WisDOT's decisions and actions leading up to parcel closing may be influenced by circumstances such as: size and complexity of the appraisal problem, whether occupants are being displaced, whether acquired lands and improvements will need to be managed post acquisition, and whether there is a likelihood that the acquisition will result in litigation.

If a fee consultant was used to carry out any part of a real estate transaction, performance evaluations are required. FDM standards say an evaluation must be completed within 30 days of each completed service for each contracted service totaling \$10,000 or more. However, WisDOT Real Estate standards are to complete an evaluation on every completed service. Evaluations are used to monitor and ensure consultant competency and work product quality. For all completed projects using a fee consultant appraiser, the region will use the Appraiser Performance Evaluation (RE2127); and, for completed projects where a consultant was used for work other than appraisal, the region will use the Real Estate specific general Consultant Performance Evaluation (RE1023). For more about consultant services, see REPM/Section 1.7 Contracting for Real Estate Services and the FDM/Chapter 8: Consultant Services.

### 3.6.1 Satisfaction of Mortgage, Partial Release and Other Liens

Satisfaction of mortgage - Recorded mortgages should be reviewed for terms and conditions governing the borrower's obligations when WisDOT is acquiring an interest in property secured by the mortgage. The record mortgage holder should be contacted to determine the lender's preference for how compensation proceeds for the acquisition are to be managed. Depending upon the extent of the acquisition, the mortgage lender may require that all or substantially all of the proceeds be paid to the lender, with the remaining balance, if any, paid to the property owner. Regardless, to the extent the mortgage encumbers the area being acquired for the project, all mortgages must be satisfied and released. The WisDOT form approved for use where the mortgage is to be satisfied and released is the Satisfaction of Mortgage (RE1550). The record mortgage holder needs to be provided with and instructed to use our WisDOT release form(s), and reminded to include our WisDOT Real Estate project and parcel identification numbers when completing the form(s). After recording, these documents must be scanned into READS. Some additional references to release of mortgages are mentioned in Section 3.5 Conveyance of Documents of this manual.

Partial release of mortgage - Where the parcel acquisition is for only a portion of the subject property, a Partial Release of Mortgage (RE1549) is required to secure clear title of acquired property. Unless separately paid and satisfied, all parties of interest must be named on the compensation proceeds check. The sole exception to the requirement to include a party of

interest on the proceeds check is where WisDOT is notified in writing that the interested party expressly elects not to be included in the payment. In all other instances, when securing a partial release of mortgage, the agent should:

- Give written notification of the pending acquisition to the lender of record;
- Name the lender of record on owner's proceeds check unless the lender of record states otherwise in writing; and,
- Record the partial release, which partial release must include a copy of the acquired parcel's legal description.

Note: As a final option, even if negotiations with the property owner are successful, where the time and expense necessary to secure a partial release is deemed too high, the region may notify the property owner of the problem with the lender's requirements and then move forward to acquire the parcel through condemnation. After following the procedures for acquiring by condemnation set forth in this manual, the condemnation proceeds check may then be deposited with the clerk of the circuit court, for the benefit of the persons named in the award.

Satisfaction of other liens - Where the title information discloses other outstanding and unsatisfied liens or judgments of record, the region must contact the lien holder to establish a payoff amount. To properly clear title to the acquired property, in exchange for a properly executed satisfaction of lien in recordable form, the lien payoff amount must be shown on the Closing Statement (RE1617) and paid to the lien holder by separate check out of the closing proceeds. The lien satisfaction must then be recorded along with any mortgage satisfactions and the executed conveyance instrument. Where the proceeds for the acquisition are insufficient to pay off all of the outstanding record judgments and liens, the required parcel will need to be acquired via condemnation, with the proceeds deposited with the clerk of the circuit court pursuant to [Wis. Stats. s. 32.05\(7\)\(d\)](#). Thereafter, the judgment and lien holders, along with the other parties with interests of record can petition the circuit court for a determination of how the acquisition proceeds will be paid.

### 3.6.2 Closing Statements and Payment Procedures

Closing statements - A Closing Statement (RE1617) must be prepared for any acquisitions requiring deductions, additions or installments and should be signed by the owner(s). See Section 3.7 of this manual for guidance on tax proration and delinquent taxes and special assessments. The Closing Statement also includes documentation to satisfy the IRS 1099-S requirements for real estate transactions valued at \$600 or more. If the proceeds payment is \$600 or more, the owner should be asked to complete an IRS 1099 form (see current IRS instructions) so that an IRS Form W-9 can be prepared for the owner. If a Closing Statement (RE1617) is not needed for a parcel, the region may include the 1099 information (e.g., social security or federal employer number, and multiple owner allocations) in the cover letter that accompanies payment to the owner. For more on IRS 1099s, see Section 3.8 of this manual.

Check delivery - Careful forethought to scheduling and close coordination with BTS-RE/Finance is imperative to allow for proper check handling and normal processing time. The "rush" payment request process should be exercised sparingly. Likewise, checks should not be ordered with the intention of holding them for several weeks. The lead-time for ordering compensation proceeds checks intended for distribution at closing should be the minimum time necessary to ensure their timely receipt. The agent conducting the closing must be a notary public in order to authenticate or acknowledge the grantors' signatures. If closing in person, all persons and parties of interest should be present as an executed (signed) deed, with notarized signatures is required to convey

the required property or property interest. After the conveyance is properly executed and received, then the compensation proceeds checks can be distributed. The Closing Statement (RE1617) and any other papers relating to the transaction should be signed at closing. The compensation proceeds payment must be made before executed conveyances or award of damages are recorded. Once recorded, the lands and interests being conveyed vest in the state. The parties of interest to the transaction should receive a packet containing copies of all documents and papers executed and transmitted at the time of closing. Compensation proceeds checks can be delivered in person or by mail depending on the circumstances. If the conveyance has already been executed, it may be more efficient to send the proceeds check to the owner with a cover letter giving instructions to sign and return the original the Closing Statement (if applicable, see "Closing Statements" above). Include a stamped self-addressed envelope. Note: Payments for parcels with significant damages or a high risk of appeal should be sent via certified mail with return receipt requested so that delivery can be documented.

Check re-deposits - Proceeds checks should be re-deposited as soon as it becomes apparent that the terms of the transaction will change, or if the closing will be delayed for a significant period. To avoid accounting problems associated with refund of expenditure rules, extra care must be taken at fiscal year-end to ensure checks are re-deposited during the same fiscal year as the year in which they were drawn. The state fiscal year ends each June 30<sup>th</sup>. Deposits of prior fiscal year checks can only offset a related state funded expenditure through the end of the "throwback period," which normally ends around July 20<sup>th</sup>. Any questions related to the re-deposit of proceeds checks where the deposit is to be made in a subsequent fiscal year should be directed to BTS-RE/Finance.

Serving a copy of conveyance or award - Where negotiations result in a conveyance instrument, deed or easement, the negotiation statute requires WisDOT to "serve upon or mail by certified mail" a copy of the conveyance instrument on all "persons named therein." The term "service" in this context, means that all parties with an interest of record immediately prior to the execution of the conveyance instrument, each of whom have been listed on the conveyance, are to receive a copy of the conveyance instrument, along with a notice of the right to appeal the amount of compensation. Along with service by certified mail, the copy can be personally delivered to each party of interest by WisDOT's employee or agent, with suitable notations made in the Negotiation Diary (RE2058). Where service is by in-person delivery, caution dictates that the party or party of interest receiving the conveyance copy should be asked to sign a receipt acknowledging delivery. Alternatively, the copy can be served in the sense of commencing a lawsuit, by having the copy served upon each party of interest either by the county sheriff, or by a professional process server. The negotiation statute is silent with respect to if the conveyance copy being served must be a copy of the recorded conveyance. Given that the legislature's purpose underlying the service requirement is to alert the property owner and other parties of interest about their right to appeal from the amount of compensation, and given that the appeal period is fixed by law, prudence suggests that, whenever feasible, the region should serve a copy of the recorded conveyance. In those instances where negotiations fail, the condemnation statute provides nearly the same service requirement. The statute requires that a copy of the award be served upon or mailed by certified mail to all persons named therein. Consequently, the procedure set forth above related to service of the conveyance should be followed. In situations where the owner or party of interest named on the award cannot be found, or the address is unknown, the statute provides that the award can be published in the newspaper for the county where the property is located. The award publication is to be done under Wis. Stats., [Chapter 985](#), as a class 3 notice, with completed publication "as shown by affidavit" constituting "proper service."

### 3.6.3 Recording Conveyances and Awards

Once service of the deed or award copy is complete, and full payment is made, conveyances and awards must be recorded at the Register of Deeds in the county where the parcel is located. As mentioned earlier, the lands and interests required for the highway project vest in the state the moment the conveyance or award is recorded. If the parcel is located in more than one county, record the conveyance or award in each county. The department is exempt from certain title transfer taxes and fees, but is required to pay all other reasonable and necessary “expenses incidental to the transfer of property,” which include, among others, recording fees. See, [Wis. Stat. sec. 32.195](#). Upon return from the county register of deeds, recorded copies of conveyances shall be scanned and uploaded into READS.

### **3.6.4 READS Entry**

The Real Estate Automated Data System (READS) is the official location for storing electronic WisDOT real estate records.