

**Arizona Department of Transportation
Project Delivery and Operations Division
Right of Way
Procedures Manual**



**TITLES SECTION
UNIT 4945**

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Infrastructure Delivery and Operations

An Arizona Management System Agency

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July 6, 2018

Karla Petty
Arizona Division Administrator
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Attn: Alan Hansen, Team Lead – PEARC
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Dear Ms. Petty:

As the Right of Way Administrator of the Arizona Department of Transportation, Right of Way Group, I hereby certify to the Federal Highway Administration in accordance with CFR 710.201(C), that the current Right of Way Manual submitted is in conformance with Federal and State real estate law and regulations.

There have been no changes to State law that would cause the manual to be in conflict with the Uniform Act requirements. The manual conforms to existing ADOT practices and contains the necessary procedures that comply with the Uniform Act and federal and State real estate laws and regulations. The ROW Manual reflects the amended provisions of the 23 CFR 710 Final Rule published August 23, 2016.

Sincerely,

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De acuerdo con el Título VI de la Ley de Derechos Civiles de 1964, la Ley de Estadounidenses con Discapacidades (ADA por sus siglas en inglés) y otras normas y leyes antidiscriminatorias, el Departamento de Transporte de Arizona (ADOT por sus siglas en inglés) no discrimina por raza, color, origen nacional o discapacidad. Personas que requieren asistencia (dentro de lo razonable) ya sea por el idioma o por discapacidad deben ponerse en contacto con la Oficina de ADOT en 602.712.7316. Las solicitudes deben hacerse lo más antes posible para asegurar que el Estado tenga la oportunidad de hacer los arreglos necesarios.

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Chapter 1 Organization and Responsibilities

1.01 Purpose

The purpose of this chapter is to describe the organization, authorization and regulation and responsibilities of the R/W Titles Section.

1.02 Organization and Functions

The R/W Titles Section, which is supervised by a Manager under the general direction of the Deputy Right of Way Administrator for Development, consists of four (4) major functions: Title Research, Resolution, Condemnation Functions, and Property Tax Resolutions on ADOT-owned property.

See current Table of Organization is located in the main table of contents [\(Unit 4945\)](#).

The primary functions of the R/W Titles Section are:

- a. Examine real property records at various federal, state, county, and city offices; prepare title reports and existing right of way reports based on information obtained; conduct field investigations as needed.
- b. Review private title company reports for accuracy, correct in house or resubmit to Title Company for correction.
- c. Prepare Resolution of Establishment and Disposal for approval by the State Transportation Board; review for compliance with State Transportation laws.
- d. Gather and prepare data for the Attorney General's Office when Condemnation proceedings are required; institute necessary actions in the appropriate Superior Court.
- e. Provide title related research and opinions to the Attorney General's Office and its Risk Management Sections for potential or existing litigation.
- f. Provide information verbally and in writing to the general public, ADOT groups, and local jurisdictions as to existing or proposed right of way or other transportation facilities.
- g. Contract and coordinate as needed with private title companies and ADOT consultants for the preparation of title reports and other research.

1.03 Authorization and Regulation

The R/W Titles Section operates under the authority delegated by the Right of Way Administrator to initiate and perform approved assignments and responsibilities. Other authorities and regulations guiding the R/W Titles Section include:

- a. Arizona Revised Statutes (ARS) 11-951 and 11-954: Joint exercise of powers.
- b. ARS 28-363 and 28-364: Powers and duties.

- c. ARS 28-334: Acceptance and expenditure of federal funds; limitation.
- d. ARS 28-7209: Powers and duties of the Board; vacated/abandoned highway.
- e. ARS 28-368: Powers and duties of the Director. Power of Director to acquire property.
- f. ARS 28-7041 through 28-7057: State Highways and Routes.
- g. ARS 28-7201 through 28-7215: Disposition of public roadways.
- h. ARS 28-7091 through 28-7103: Eminent Domain. Purchase, sale or condemnation of land for transportation purposes. Arizona Constitution Article 2, Chapter 17, and Article 14, Chapter 9, Eminent Domain.
- i. ARS 41-515: Acquisition of land for parkways, scenic and historic; scenic easement.

1.04 Responsibilities of the Titles Section

The following responsibilities are assigned to the R/W Titles Section:

- a. Assure that the State acquires satisfactory title to all property acquired for right of way and other transportation facilities.
- b. Prepare Resolutions of Establishment and Disposal for approval by the State Transportation Board; Assure compliance of said Resolutions with applicable State Transportation Laws.
- c. Assist the Attorney General's Office in Condemnation proceeding; initiate said proceedings as necessary and file required actions in the Arizona Superior Courts.
- d. Provide title related research to the Attorney General's Office and its Risk Management Section for claims or potential claims against the State or for litigation actions.
- e. Answer inquiries from the general public, ADOT groups, and local jurisdictions concerning existing or proposed existing right of way and other transportation facilities.
- f. Prepare existing right of way reports for documentation of State, County and City highways, roads and streets.
- g. Prepare various title reports for the acquisition and disposal of real property interests; prepare special reports as needed.
- h. Review private title company reports for accuracy as needed.
- i. Conduct field investigations as needed for parcels to be acquired or disposed of by ADOT.

1.05 Primary Goals and Objectives

The primary goals and objective of the Titles Section are to:

- a. Carry out assigned responsibilities in a prudent and economic manner.
- b. Schedule workload to make the most efficient use of personnel.
- c. Make every effort to meet due dates.

1.06 Title Research

Title research consists of the search, examination and preparation of preliminary ownership reports, ownership reports, temporary construction easements reports, title reports, existing right of way reports, and any special reports requested by ADOT groups, governmental agencies and the public.

1.07 Resolution

Resolutions of Establishments are generally prepared according to bid dates for construction projects and are mandatory prior to spending any money for acquisition, relocation, etc. Resolutions of Disposal regarding extinguishment of an easement or abandonment to other Governmental Jurisdictions are prepared upon the completion of the Disposal process as defined under Section 3.06 herein.

This resolution function requires research and review of past Resolutions to determine verbiage in the preparation of new various Resolutions for Establishment, Disposal, Route Re-designation, Scenic and Historic or Parkway designations which will have a major effect on current Resolutions being prepared. Determinations as to when a route was taken into the State Highway System as a State Route and later as a State Highway, any relocation improvements thereafter, and any prior route numbering designations are also an important factor to consider. The Transportation Board Minutes and approved Resolutions are organized and filed, as these items will be used for necessary research in years to come. All Resolutions must be prepared in accordance with the State Transportation Laws.

1.08 Condemnation

The Condemnation process starts as a result of negotiation breakdown between a property owner and ADOT. The issue may be of value or a title problem. The right of eminent domain is an inherent right of sovereignty to appropriate private property for public good. The laws of eminent domain are defined in ARS 12-111 and 28-7091 through 28-7103. In this Condemnation process the value and/or title issues are resolved by the Arizona Attorney General's Office and the courts.

1.09 Major Documents and Reports Originated or Processed

R/W Titles Section originates or processes the following documents or reports:

- a. Title Reports.
- b. Existing Right of Way Reports.

- c. State Transportation Board Resolution of Establishment and Disposal.
- d. Files and reports relating to Condemnation proceedings.
- e. Special reports and correspondence as required for management, ADOT groups, the general public, the Attorney General's Office, and other Governmental jurisdictions.

1.10 R/W Titles Section - Table of Organization

Please refer to the Manual Introduction for the most recent Organizational Chart.

Chapter 2 General Procedures

2.01 Purpose

The purpose of this chapter is to describe the general policies and procedures of the R/W Titles Section. When circumstances require deviation from these procedures, the R/W Titles Section Manager will determine the course of action best suited to the situation.

2.02 Function

A R/W project is considered assigned to R/W Titles Section upon receipt of a written request from any of a number of sources. The pertinent information is immediately entered in the log, which is a record of all projects in progress.

2.03 Origins of Title Report Requests

A request from the R/W Plans Section is usually for an ownership report, to be furnished by a specified date, and for title reports to be furnished by a later, specified "due date."

- a. A request for a material site title report will also be received from Materials Section.
- b. Requests for title reports to be used in the acquisition of maintenance or other utility sites are received from R/W Property Management Section.
- c. Requests for special purpose reports generally come from Administration, but also may come from other Sections of the Department.

2.04 Project Files

An electronic file directory is established for R/W projects containing records of all matters pertaining to the project. A single file is set up for each material or maintenance site and other facility. Electronic files shall be located on a central server that follows appropriate file structure protocols and back up procedures.

2.05 Title Examining Procedures

The R/W Titles Section Manager will assign the project to a staff examiner. The staff examiner will make the necessary search and examination of the public records and will prepare the required reports.

- a. If a title examiner learns that an owner of a specific parcel of land is a minor, or is otherwise incompetent, the R/W Titles Section will be notified immediately and a copy of the title report and any pertinent information will be forwarded to the office of the ADOT Legal Advisor.
- b. When the staff is unable to provide the required title reports, the R/W Titles Section Manager will purchase the reports from a title company under contract with the Department of Transportation.
- c. Before finalizing title reports on R/W project parcels, a staff examiner will generally conduct a field investigation to determine any unrecorded interests.

2.06 Review

The R/W Titles Section Manager or a senior Title Examiner reviews all completed reports and, after having them typed, proofread for transcription accuracy. The file is then ready for transmittal.

2.07 Report Assembly, Transmittal, and Filing

Completed reports are assembled for each Section concerned and transmitted by appropriate correspondence or email. A copy is stored in the R/W Records Center. The R/W Titles Section copy of each report is permanently stored in an electronic file.

2.08 Transaction Package Final Review

In addition to providing title information, R/W Titles Section is also responsible for reviewing all transaction packages that involve escrow.

- a. R/W Titles Section will receive from R/W Operations Section all escrow transaction packages when all of the necessary documents have been received from the title company.
- b. R/W Titles Section will check each closing statement to determine that documents have been signed and notarized accurately. If errors are found, it will be returned to the Acquisitions Section for corrections. R/W Titles Section Manager will indicate their approval on these two documents before sending the package to the Records Center for inclusion in the master parcel file.

Chapter 3 Titles Examining Procedures

3.01 Purpose

The purpose of this chapter is to present procedures for handling title examining work performed by the Titles Section.

3.02 Titles Manager Surveys and Assigns Work

The Titles Manager surveys the assignment and obtains additional information and documents from the Section and/or Department files as deemed necessary to complete the reports requested. The date and the examiner assigned will be entered in the log or database. This log or database may be electronic in nature. Electronic logs or databases shall be located on a central server that follows appropriate file structure protocols and back up procedures.

3.03 Assignment Work Procedures

- a. Upon receipt of a "Title Assignment", (ADOT Form 60-3903, Exhibit 18.01), the examiner will search public records and conduct a field investigation to gather information for a draft of the final report. The most current write-up for a specific parcel will be placed in an electronic folder. Electronic files shall be located on a central server that follows appropriate file structure protocols and back up procedures. This folder contain a Titles Section work folder and the final title document.
- b. A qualified Title Examiner will then review the entire report and folder for completeness and accuracy. If more work is required, the assignment is returned to the examiner for further action. The qualified Title Examiner again reviews the entire report and, if the assignment is proper and complete, refers it for release, publishing, and/or transmittal.
- c. The reviewed report is returned to the original examiner for final proofread and to make the necessary final changes. Generally, each report should be indexed and contain all necessary backing documents.
- d. The original report will be placed in the Titles Section electronic file folder. The original Word or editable format document will be compiled placed in the electronic parcel file root folder. All other material will be placed in the "Misc" subfolder located inside the root folder. This final report shall be in Acrobat .PDF or appropriate format.
- e. The report will be released, published, and/or transmitted to each of the following Sections: R/W Plans and Delineation, Project Management, Acquisition, and the Records Center. Any additional staff may be added to the notification as deemed necessary.
- f. Additional documents will be appropriately downloaded or scanned, labeled and placed in an electronic folder with the title reports as necessary:
 1. For R/W Plans Section:
 - (a.) Subdivision maps,

- (b.) Appropriate deeds, easements, and judgments.

(When any of the above items have been furnished with the ownership report, it will not be necessary to send additional copies with the title reports)

2. For Project Management Section:

- (a.) Subdivision maps,
- (b.) Existing R/W report,
- (c.) Restrictions for each subdivision,
- (d.) Any conveyance or other instrument, which contains restrictions or covenants affecting the possible use of the land,
- (e.) All easements except those that are set out in the existing R/W report,
- (f.) Each lease on private land,
- (g.) Each agreement for sale which appears as a vesting instrument or in the five year chain-of-title, and
- (h.) Each vesting instrument on private land.

- g. All sets of the reports and the documents set forth above will be transmitted to R/W Plans Section.

3.04 Arizona Transportation Board Resolutions (This area may be moved to a new chapter)

Resolutions are formal approval by the State Transportation Board as required by Arizona State Statute authorizing the Director to establish, open, relocate, alter or abandon a state highway or thereof. The resolutions are based on the Directors report and recommendations, which are made part of the resolution.

- a. Both the Director's report and recommendation and the Board resolution will be prepared on 8 1/2 inch by 11-inch letter size format.
- b. Resolutions are prepared and presented to the Right of Way Administrator for the State Engineer and the Director, in a single-spaced typed format: the original of both the Director's report and recommendation, and the Board resolution, which is signed and certified upon approval by the Board. Duplicate originals of the Director's report and recommendation and the Board resolution are then made a part of the official recorded minutes. These official documents will be prepared electronically and produced on a letter quality printer providing a neat, uniform record, and the contents stored electronically until the original has been received from the records office.
- c. Resolutions are generally categorized as follows:
 - 1. Resolutions of establishment, which include the following:

- (a.) The establishment of state routes and state highways and other transportation facilities.
 - (b.) Authority to acquire needed right of way, improvements, and incidentals thereto, for new routes and highways, alternate routes, and relocation and realignment of existing routes and highways.
 - (c.) The establishment of Parkways, Scenic, and Historical Routes.
2. Resolutions of disposal include the disposal of any interest in real property held by the Arizona Department of Transportation. Disposal may be accomplished by:
- (a) Abandonment
 - (b) Exchange
 - (c) Vacate (extinguishment of easement)
 - (d) Grant of easement
 - (e) Change of use
3. Resolutions establishing - corridors.
- (a.) Preliminary
 - (b) Refine
 - (c) Resolution of Necessity
4. Resolutions outside the discipline of the above are written occasionally. These include but are not limited to:
- (a) Resolution of rescission
 - (b) Re-designation of state and federal route numbers
 - (c) Renumbering state routes and state highways
- d. The general procedures in preparing the Director's reports and recommendations and the Board resolutions are as follows:
1. Upon receipt of a request from R/W Administration, an appropriate Director's report and recommendation resolution of sufficient scope to meet the needs of the Department is prepared. The report, and recommendation and resolution shall describe and encompass the needed right of way, include highway nomenclature, and designate state route name and number, with a map, plat, or plan sheet as needed to depict the area in question.
 2. Initiated by District Administrator. A request for disposal, properly filled in, is usually directed through the District Administration to the R/W Titles Section. Upon approval, an entry of the request will be logged in the Resolution Database, and the request will be processed through the various offices for Departmental approval.
 3. Occasionally special recommendations and resolutions are prepared for the Transportation Board, State Engineer, Right of Way Administrator, or in some cases, other Transportation Divisions, such as the Aeronautics Division. These

may be in the form of public interest items, ADOT special programs, or other related transportation functions.

4. Director's reports and recommendations and Board resolutions are also prepared to renumber presently designated state routes or the state highways by and re-designate request from the Board or the State Engineer, through the Chief Deputy State Engineer, as the need arises.
5. Prior to Board submission, the Director's reports and recommendations and Board resolutions shall be reviewed and approved by the R/W Titles Section Manager and the Right of Way Administrator and approved, as to form, by the Office of the State Attorney General.
6. A complete inventory of all resolutions is prepared for the R/W Section, and thus provides a service for the various groups of the Project Delivery and Operations Division, and other interested parties, by making information available relating to Board approved resolutions. The R/W Titles Section is also responsible for the control of all documentation and verification of title records, legal descriptions, ownerships, and other data relating to the preparation and entry of resolutions.

3.05 Requests for Establishment of R/W Facilities

A resolution to establish a state route, highway, or other facility will be prepared upon receipt of a request from R/W Plans Section Teams. A request is accompanied by a plat, map and/or plan sheet, which is used as an Appendix "A" in the resolution. These requests generally come from the Plans section. They may come from any department heads: Roadway Design, Project Management, R/W Acquisition, etc.

- a. Upon approval of the above, a resolution is scheduled for a regular meeting of the Arizona Transportation Board. It is to be prepared and then approved by the R/W Titles Section Manager, the Right of Way Administrator, and approved, as to form, by the Office of Legal Advisor, and placed on the agenda for the next regular meeting of the Arizona Transportation Board. Reports and recommendations and Board resolutions are presented to the State Engineer's Office electronically by approved method. Copies of the report and recommendations and Board resolutions are provided to the Director's office for distribution to Board members at least seven (7) working days prior to the official Board meeting date.
- b. Upon adoption and notification of approval by the Arizona Transportation Board, the R/W Titles Section is responsible for the recordation of all resolutions electronically in the appropriate county recorder's office.
- c. Upon the return of the original recorded resolutions from the recorder's office for the month, the resolution file is then purged, necessary copies are distributed, appropriate information is added to the Resolutions Database, and the resolution file is retired to the R/W Records Center.
- d. A current and historical inventory (log) of all resolutions is stored in the Resolutions Database and shall be made available to interested parties.

3.06 Requests for Disposal of Real Property or Easement

Requests for recommendation of disposal shall be processed by the established procedure as set forth below.

- a. The "Recommendation for Disposal of Real Property", (ADOT Form 60-3311, Exhibit 18.02) will be submitted to the R/W Titles Section.
- b. Abandonments, vacation, extinguishments, relinquishments – Right of Way acquired through Resolutions of Establishment, including ADOT acquired fee and/or easement parcels being conveyed City or County (local agency). Also includes adjacent or underlying fee property owners in the case of vacation, extinguishment and/or relinquishment.
 - i. Examine Form 60–3311 for details of the disposal. Forward to the Right of Way Administrator for analysis, approval and instructions for circulation.
 - ii. Obtain copies of all resolutions that affect the disposal property.
 - iii. If not furnished, capture a detailed aerial view from the county website or from the Arizona Aerials
 - iv. Obtain a copy of the Plans Set(s) and Record Drawings; include older sets if they cover the same area. They may be updated by the Plans Section when the transaction is completed.
 - v. Locate applicable plat maps, assessor's maps, and arb maps
 - vi. Make copies of the Tax Roll and plant printout from Data Trace.
 - vii. Obtain all vesting documents.
 - viii. From the original ADOT parcel acquisition forward, check for any interest that may have been conveyed since that date, such as a lease, an easement to a utility company, a partial disposal, sale, etc.
 - ix. When R/W has been obtained through a Resolution of Establishment from a town, city, county or other such jurisdiction, obtain the underlying Ordinance of Establishment and/or Annexation – in addition to any instruments of easement or fee conveyance to the local agency.
 - x. Prepare Disposal file and appropriate Resolution template for review and approval.
- c. Disposals on Federal Interstates only.

A disposal file is prepared for final review. It should contain all necessary maps, legal descriptions, title information, and environmental documents. If necessary, secure any correspondence needed to satisfy Federal Highway Administration regulations involving federal aid projects and necessary correspondence with local jurisdictions, state agencies & district.
- d. Disposals on all Federal lands using a Federal Land Transfer or Highway Easement Deed, including but not limited to Bureau of Land Management (BLM), Bureau of Reclamation (BOR), and US Forest service lands.
 - i. A package including a formal Letter of Request is sent to the Federal Highway Administration (FHWA). The letter explains the need for the relinquishment/reassignment action and the circumstances surrounding it. It is accompanied by any and all applicable exhibits, including, but not limited to Surveys, Right of Way Plans, Aerial Views, and Record Drawings.
 - ii. FHWA will assess the feasibility and the impact of such an action.

- iii. The FHWA will issue their decision, based on Federal guidelines. Oftentimes they will require that certain remedies or actions take place prior to approval. Filing fees are a possibility. Other matters can also enter into consideration, including but not limited to reclamation of certain areas and environmental concerns and possible necessary clearances.
 - iv. Prior to final approval, the FHWA will require a Letter of Nominee be issued by the local agency. This letter should request that the right of way be granted to the local agency by Highway Easement Deed (HED), and explain the potential benefits.
 - v. The ADOT Delineation Unit is then responsible for creating the HED, which itself is then submitted to FHWA for review, approval, and final execution
 - vi. The HED is returned to ADOT for acceptance execution. At that point, a Resolution of Relinquishment is drafted and submitted to the State Transportation Board. Once approved, signed, and sealed, the document is returned to Titles or Titles Resolutions for recordation in sequence with the HED.
 - vii. Once recorded, the transfer is effective and complete. Though Board-approved, the relinquishment and reassignment are not effective until recorded in the appropriate County.
- e. Reassignment of Arizona State Land Department (ASLD) land.
- i. Titles Section forwards an ASLD Application for R/W Assignment to the City or County (local agency). The local agency will fill out this form. Once completed and returned to ASLD, this serves as the formal request to begin the process.
 - ii. There is a \$1,000 Application Fee.
 - iii. ADOT Right of Way is required to submit complete metes and bounds legal descriptions and exhibits separated by Section, Township, and Range.
 - iv. ASLD will order a Title Report and assess the situation.
 - v. Once approved, ASLD will issue a Grant of Highway Right of Way Easement to the local agency and an Amended Grant to ADOT for the portions of ADOT's previous acquisition that will remain under ADOT jurisdiction, if any.
 - vi. The City is responsible for recording the Grant of Highway Right of Way Easement that ASLD will execute and forward to the City. The recordation of the Grant is not required by law. However, it does make for proper public record.
 - vii. A Resolution of Relinquishment is drafted and submitted to the State Transportation Board. Once approved, signed, and sealed, the document is returned to Titles for recordation, in sequence with an Amended Grant of R/W to ADOT, if required. As a courtesy, Titles can record the ASLD Grant to the local agency in sequence with the Resolution of Relinquishment. In any event, the two recordings should be coordinated and carried out in a timely sequence,
 - viii. Once recorded, the transfer is effective and complete. If desired, the documents can be withheld from recordation until the three-month training period has been completed - or longer, as needed. Even though Board-approved, the relinquishment is not effective until recorded in the appropriate County.
- f. Upon approval and completion of final review, the appropriate Director's report and recommendation and Board resolution of disposal will be prepared, approved by the

R/W Titles Section Manager and Right of Way Administrator or their assigns, and placed on the agenda for the regular meeting of the Arizona State Transportation Board (STB). The Director's reports and recommendations and original Board resolutions are presented to the State Engineer's office and copies of the Director's reports and recommendations and Board resolutions are provided to the Director's office for distribution to Board Members at least seven working days prior to the official Board Meeting date.

- g. Upon adoption and receipt of the recorded resolution, the District Administrator, appropriate political subdivision, and appropriate R/W personnel shall be notified of the disposal of real property.
- h. Upon return of the original recorded resolution from the recorder's office for that month, the file will be purged and retired to R/W Records Center.
- i. Letters of notification must be sent (1) some prior to recording, (2) some after recording.

Chapter 4 Titles Preparation of Reports

4.01 Purpose

The purpose of this chapter is to describe the various types of reports prepared by staff examiners.

4.02 Preliminary Ownership Reports

Preliminary ownership reports are prepared by staff examiners upon receipt of a request from R/W Plans Section. They are generally not furnished for all projects. Each of the reports consists of a statement, or drawing, indicating which lands on a project are federal, state, or private, and the county tax assessor's maps for the area.

4.03 Ownership Reports

Staff examiners prepare ownership reports. These reports consist of a list of the legal descriptions of the parcels of land affected by a R/W project, the names of the owners, the tax assessor's parcel numbers, and the Book and Page of the vesting instrument. These reports also include the legal description of contiguous land. The information contained in these reports is obtained from official public records.

4.04 Title Reports

Title reports contain a complete and accurate account of all recorded or unrecorded matters affecting the title to each parcel of land on a R/W project. Title reports are prepared by staff examiners, except when it is considered advisable to request that such reports be ordered from a contracted title company (see Chapter 5). Title reports on federal and state public lands and on lands of Indian tribes are always prepared by staff examiners. Individual title reports are prepared for:

- a. Each federal agency concerned or other owner.
- b. Each section or part of a section of state-owned public land.

4.05 Federal, State and Primate Land Reports

- a. When a report covers federal land, the owner is shown as "United States of America" followed by the name of the agency having control or jurisdiction.
- b. When a report covers state land, the owner is shown as "State of Arizona," followed by "State Land Department" for general state public lands, or the name of such other department which has jurisdiction.
- c. When the title report covers privately owned land, the names of all owners shall be shown in full. The terms "et ux," "et al," "etc.," shall not be used.

4.06 Title Report Face Sheets

The "R/W Title Report Form", (Exhibit 18.03) is to be used as a face sheet for all title reports prepared by staff examiners and also as face sheet for title company reports. (The face sheet is always "page 1" and all other attached sheets shall be numbered consecutively thereafter.) The face sheet of the title report form provides space for items a, b, and c, which follow. All other items (d through g) shall be set out on subsequent pages of the report in the order they appear below. When the space provided on the face sheet is not sufficient for any part of items a, b, or c, the information shall be shown on the next page or pages of the report.

4.07 Parts of the Title Report

The title reports shall include, but not necessarily be limited to, the following in the order shown:

- a. Name and address of owner: The mailing address on the title report is taken from the County Assessors Records or the most recent instrument.
- b. Recording data of vesting instrument: The vesting instrument is the conveyance of whatever type which transfers title to the present owner, i.e., deeds, agreement for sale, court decrees, etc. The name of the grantor, type of instrument, date, and recording data is set out in the space provided on the R/W title report. This information shall also be set out when the R/W title report is used as a face sheet for a title company report.
- c. Description: Generally, the description of a parcel is shown in the title report as it is found in the official public records. Whenever a description is incomplete or inaccurate, an explanation or advice that will enable R/W Plans Section to properly plot the property is set out on a subsequent page of the title report with a reference thereto made on the face sheet.
- d. Contiguous property: All title reports include any contiguous property, including land leased from the United States, or state, when the subject property is a farm or ranch. The description of contiguous property may be obtained from tax records, but shall be verified with the official record at the office of the county recorder.
- e. Encumbrances: Encumbrances include, but are not limited to, such matters as taxes, mortgages, easements, leases, and judgments. "Schedule B" of the title report shall include encumbrances determined by the field investigation as well as those of record, except those for which requirements are made.

Complete details such as names, dates, description, and recording data of recorded instruments are set out in the title report. Encumbrances established by the United States or the state prior to patent is included in the staff title reports.

- f. Requirements: Requirements necessary to vest good and sufficient title to the state are set out in detail. Explanations for unusual requirements are set forth when deemed advisable.
- g. Five-year chain of title: The five-year chain of title consists of a list of all conveyances for the five years prior to the date of the title report. Names of parties, dates and recording data of such conveyances shall be spelled out completely. The vesting instrument is not included in this part of the staff report; it is shown on the face sheet. If the vesting instrument is more than five years old, such information shall be shown on the title company reports as well as staff-prepared reports.

4.08 Updating Title Reports

- a. Periodically, it is necessary to update the title reports for a R/W project. Generally, the R/W Titles Section will receive a request from R/W Plans Section for this purpose, but may update title reports on its own initiative. The work necessitated by each request is handled in the same manner as work generated by original requests for title reports.
- b. The general rule is that title reports should be no older than one (1) year upon completion of the R/W plans for any project.
- c. When a major change has been made in the title of any parcel, a completely new title report shall be prepared by a staff examiner. When minor changes have been made to the title of any parcel, the examiner will make the necessary changes by re-writing only those pages of the report thereby affected. These procedures shall apply to title company reports and staff-prepared title reports.

4.09 Existing R/W Reports

The existing right of way report for a project is prepared while the title reports are being prepared, and will contain information and documentation not only for the road, which is the subject of the project, but also for any and all streets, or roads that will be affected by the project. The report will indicate if such streets or roads are valid or invalid, if they are public or private rights of way, and if they are city streets, county roads, or state highways. This report will include the pertinent data concerning the following items as applicable to the roads reported:

- a. Name of street or road.
- b. Manner of establishment, i.e., city ordinance, resolution of the County Board of Supervisors, resolution of the Arizona Highway Commission, or Transportation Board.
- c. City street map or county road map.
- d. Recorded easements to city, county, state, or individuals.
- e. Permits from United States, or State Land Department, to city, county, state, or individuals.
- f. Federal and state statutes.
- g. All other matters which may be disclosed by the record search or field investigation.

4.10 Material Site Title Report

A material site title report is prepared upon request from the R/W Plans Section. Materials Section uses the report in the acquisition of lands or rights to roadway materials suitable for the construction of highways by the Department.

Each material site title report shall be prepared and processed the same as right of way project title reports, except that only the requirements necessary to clear the title of the material site and any required haul roads will be shown on the title report.

4.11 Title Reports for Temporary Construction Easements

Title reports to be used for the acquisition of temporary construction easements are prepared as other title reports (see 4.07) except that contiguous property, encumbrances, and the five year chain of title (4.07 d, e & g) are not included, and only such requirements necessary to secure the temporary construction easements from the owner(s) will be made. These reports will be labeled "For Temporary Construction Easements Only."

4.12 Special Reports

The form and content of these reports will depend on the nature of the situation necessitating the report, and may be anything from simple and appropriate correspondence to several documents assembled in book form. The R/W Titles Section Manager or Title Examiner will determine, on an individual basis the manner in which these reports will be prepared.

Chapter 5 Title Company Reports

5.01 Purpose

The purpose of this chapter is to describe the procedures to be followed when it is deemed advisable to order title reports from a title company.

5.02 Title Company Reports

- a. When the decision has been made to secure title reports from a title company, the R/W Titles Section Manager will place the order in accordance with the terms of the existing Title Section agreement or contract. This may include the necessity of initiating a Purchase Order (P.O.) with the Right of Way Operations. Upon receipt of the P.O., the designated P.O. number will be provided to the title company contact. The order from the title company shall be made by appropriate correspondence. This shall include the Department's project number, the descriptions or assessor's numbers of the parcels to be covered by said reports, the P.O. number, and the date by which the title reports are to be furnished.
- b. Upon receipt of an invoice from a title company covering title services, the R/W Titles Section Manager will approve such invoice for payment and forward it to R/W Operations Section for payment.

5.03 Preparation of Report Forms

The Senior Examiner will review the reports and determine what additional information, if any, is necessary for the R/W Section use. The reports will then be assigned to an examiner for property inspection and for securing any necessary additional information. Upon completion of the inspection and any necessary additional search and examination, the examiner will prepare the R/W Title Report form, and attach it as a face sheet to the report from the title company.

5.04 Type of Reports and Copies Furnished

- a. A preliminary ownership reports is furnished to R/W Plans Section.
- b. A ownership reports is furnished to R/W Plans Section.
- c. A title report is submitted to R/W Plans Section for all R/W projects. This title report will be shared with each of the following:
 1. R/W Records Center
 2. R/W Plans Section
 3. R/W Plans Delineation
 3. R/W Project Management Section
 4. R/W Acquisition Section
 5. Consultant
- d. A copy of the title report for material sites is furnished to the ADOT Materials Section.

- e. R/W Property Management Section is furnished one copy of title reports upon request or necessity. Copies of special reports are furnished as requested.

Chapter 6 Field Investigations

6.01 Purpose

The purpose of this chapter is to explain the reasons for a field investigation by the R/W Titles Section and to set forth general procedures to be followed for such an investigation.

6.02 Responsibility

The R/W Titles Section is responsible for determining the proper description for all parcels of land on all R/W projects and for determining if there are any unrecorded interests, as well as all recorded interests, affecting such parcels of land.

6.03 Field Investigation

A field investigation is made on all R/W projects, unless management determines that such an investigation should not be made on a specific project. The title examiner, to whom the project has been assigned, makes the field investigation after a completed search of the records for all parcels on the project. An investigation may also be done by digital means, including but not restricted to internet maps and aerial photography, county and state Geographic Information Systems (GIS), Arizona State Land Department (ASLD), and Bureau of Land Management online services.

- a. The Title Examiner will indicate, by appropriate notes, that they have considered various items and the nature of the information gathered during the investigation.
- b. A field investigation includes a property inspection of the project as a whole, and each parcel of land individually, as well as an interview of the property owners where practical.
- c. The examiner will make a reasonable effort to secure the permission of the owner before entering private parcels of land and should not enter any improved parcels without the owner's consent.
- d. The examiner begins the field inspection by making observations of the project as a whole and will determine if there are any additional roads affected by the project and if there are utility lines or other easements for which there are no recorded instruments.
- e. The examiner determines if there are any parties in possession other than the owner of record, and if so, under what circumstances. The examiner will secure such information as necessary to prepare a proper title report for such situations.
- f. If there are any conflicts in parcel boundaries due to erroneous descriptions in the recorded instruments, the examiner will attempt to resolve such conflicts by the inspection of the property and discussion with the owner or local authorities. It is understood that the title examiner is not qualified to make a property survey, but in many cases can determine from the field investigation how parcel boundaries should be shown on the R/W plans, and therefore how the parcels should be appraised and acquired. It

may be necessary for the title examiner to make requirements in the title report that will necessitate overlapping descriptions in the acquisition instruments.

- g. From the discussion with a property owner, the examiner will attempt to determine, if there are any deceased title holders, and if so, whether there will be a probate of the estate in this state or some other state. The examiner will secure all pertinent information regarding any probate, or, if there will be no probate, attempt to get an affidavit setting forth the names and addresses of all heirs-at-law of any such decedent.
- h. When a parcel is on federal or state land, or if there is private land with the minerals reserved to the United States or the state, and if the property is open to entry under the mining laws, the examiner will look for unpatented mining claims. When a mining claim is found, and if a location notice is also found on the claim, or the examiner learns the identity of the owner by other means, the examiner will make a search of the records of the county recorder and will prepare a title report for each such claim using the information gathered from the field investigation and the recorder's records.
- i. Other areas in which the examiner makes observations and inquiries for information, which will aid in making complete and proper title reports are:
 - 1. Contiguous property.
 - 2. Adverse possession.
 - 3. Partnerships.
 - 4. Marital status.
 - 5. Minors, or those otherwise incompetent.
 - 6. Pending sale.
- j. All unrecorded interests that are discovered during the field investigation are reflected in the title reports by encumbrances or appropriate requirements. When the examiner has completed the field investigation, a report will be prepared as indicated in Chapter 3.

Chapter 7 Encumbrances and Requirements

7.01 Purpose

The purpose of this chapter is to indicate the order in which various types of encumbrances and requirements are to be set out in the title reports and to explain any special procedures involving encumbrances or requirements.

7.02 Encumbrances

Encumbrances are always set out in the following order:

- a. On federal and state title reports:
 - 1. Grazing lease.
 - 2. Commercial lease.
 - 3. Utility easements.
 - 4. City or county rights of way.
 - 5. State rights of way.

Multiple items in the same category are listed in chronological order.

- b. On private land title reports:
 - 1. Taxes
 - 2. Restrictions
 - 3. Utility easements
 - 4. Water Rights and Wells
 - 5. City or county rights of way
 - 6. State rights of way

7.03 Requirements

Requirements are set out in the following order:

- a. Taxes (property)
- b. Special assessments
- c. Federal tax liens
- d. State tax liens
- e. Mechanics' and material men's liens
- f. Judgments
- g. Leases
- h. Probate
- i. Mineral reservations
- j. Mortgages/Deeds of Trust
- k. Deed(s) (authorization for deed, when required, for corporation, partnership, church, etc.)

7.04 Special Procedures

The Utility and Railroad Engineering Section is responsible for relocating facilities belonging to a utility company, which has a valid easement that will be affected by a R/W project.

The R/W Titles Section is responsible for determining if there are facilities installed or located within such utility easements.

The title examiner, to whom the project is assigned, will make this determination during the field investigation.

- a. Whenever there is a utility easement with facilities installed or located therein, the title examiner or the team supervisor will contact Utilities and Railroad Engineering Section to determine if that office will, in fact, relocate such facilities. If so, the title report for the property will contain a statement to that effect. No requirement will be necessary for that item.
- b. When there are no facilities installed or located within such utility easement, or if the Utility and Railroad Engineering office advises that they will not enter into a contract with the utility company regarding that particular facility, the title report will contain a requirement for a quitclaim deed from the owner of the easement for that item.
- c. When a utility company has fee title to property, which contains an operating facility that will be affected by new right of way, a title report for that property will be prepared. This title report will also contain a note stating whether this facility will be cleared by Utility and Railroad Engineering Section. If not, a requirement will be made for a deed from the owning company except for property owned by the Salt River Project or for property owned by the United States and operated by the Salt River Project. In such cases, or under other unusual circumstances, the R/W Titles Section Manager will make a decision as to how that particular item will be handled.

Chapter 8 The Title Search

8.01 Purpose

The purpose of this chapter is to describe the steps taken to conduct a title search.

8.02 Searches Begin in U.S. Government Records

- a. The title examiner begins the title examination by making a search of U.S. Bureau of Land Management (BLM) records. In this phase, the examiner first checks the cadastral survey records (GLO Plats) for the proper legal descriptions of the sections of land traversed or to be traversed by the R/W project. Second, the examiner searches the land maps and historical index in the land office tract books and prepares a list of all entries affecting the land under search. The examiner may utilize the BLM's online services. These include the Master Title Plats & Historical Index Sheets and the Land & Mineral Legacy Rehost 2000 System (LR2000). Both provide reports on BLM land and mineral use authorizations for oil, gas, and geothermal leasing, rights-of-ways, coal and other mineral development, land and mineral title, mining claims, withdrawals, classifications, and more on federal lands or on federal mineral estate. The examiner

will then abstract any necessary details from the serial register or other files for information, which will be set out in a title report.

- b. Phase two of the overall search consists of ascertaining the name of the grazing allotment and allottee or the name and date for the grazing lease from the records of the Bureau of Land Management Grazing Office. If the land under search is U.S. public domain, the search of the BLM records is all that is necessary to prepare title reports on such land.
 1. When the land is a part of an Indian reservation, the examiner makes a search of the records of the Bureau of Indian Affairs and of the Agency office of the particular reservation. From these records, the examiner will determine if the land is general tribal land or individual allotments, and then will abstract all information necessary for preparation of the title reports.
 2. When the land under search is a part of a national forest, the examiner will search the records of the headquarters office and will abstract the information necessary for the preparation of the title report.

8.03 Search for Title Under State Ownership

When the examiner finds that any part of the land under search has been transferred to the state, the examiner will search the records of the Arizona State Land Department (ASLD) to determine if it is still state land or private. If it is still state land, the examiner abstracts such information as is necessary in the preparation of the title report for that particular land.

8.04 Search for Titles of Patented Land

When the records of the BLM or the ASLD show land to be patented, the examiner abstracts the pertinent information from the patent, and is then ready to make the search of the public records for private land.

- a. The first step, usually, is to examine the records of the county tax assessor's office and, while doing so; the examiner will secure copies of the assessor's plats. The information gained from these records is not considered accurate or current enough with which to prepare title reports, but they can provide information, which is quite helpful inasmuch as they contain descriptions and owners' names for privately, owned property.
- b. The most exhaustive part of the title search is conducted in the records of the county recorder.
 1. The examiner must search for and abstract a chain of conveyances, complete from the patent to the present owner.
 2. The examiner must search for and abstract all encumbrances that affect the property under search. These include, but are not limited to, taxes, mortgages, leases, easements, judgments, and various types of liens.
 3. The examiner, when possible, will secure copies of subdivision maps, roadmaps, and any others of record that are found. If any of these are not directly available, the examiner will arrange to have them ordered by the supervisor.

4. The examiner must secure a complete description of contiguous land, which will be affected by the R/W project.
5. The examiner must also secure addresses of all owners and other parties to be contacted by the R/W agents.

Chapter 9 Public Record Sources of Title Information

9.01 Purpose

The purpose of this chapter is to describe the public record sources of title information available for use by the R/W Titles Section.

9.02 Federally Owned Land in Arizona

The basis for records of ownership of federal lands in Arizona are the records of the Bureau of Land Management (BLM), which is a part of the Department of the Interior and is the federal agency which has been charged with the management of United States land within Arizona. The Bureau of Land Management has three major divisions with which the examiner is concerned: the Land Office, the Survey Office, and the Grazing Office.

9.03 Bureau of Land Management

The BLM has established and maintains the official United States land record of all land within the state. The primary record is kept in a set of tract books that contain plats depicting the sections, townships, and ranges in accordance with the federal survey, and a historical index of matters affecting the public domain. The examiner may also utilize the aforementioned BLM's online services.

- a. These records indicate what lands were recognized as private grants at the time of acquisition by the federal government, as well as what disposition, if any, has been made to public land, including any that has been reconveyed to the federal government as a part of the public domain. The records contain information up to a transfer of title to the state of Arizona or the issuance of a patent to a private party.
- b. These records also indicate which lands have been set aside or withdrawn for Indian reservations, national forests, military reservations, or for use by the Bureau of Reclamation or other federal agencies.
- c. These records also contain entries of official actions affecting any of the public lands, such as the granting of right of way, oil and gas leases, and other special use permits.

9.04 Survey Office

The Survey Office of the Bureau of Land Management has established and maintains the records of the cadastral survey. These records are plats made from the official survey and generally referred to as the GLO Plats. They reflect the official legal descriptions of the various land sections, homestead entry surveys, and mineral surveys, etc. This office also maintains files of the official survey field notes and protraction diagrams for land that has not yet been surveyed.

9.05 Grazing Offices of the BLM

The Grazing Office maintains records of all grazing allotments and grazing leases on federal land. There are four grazing districts within Arizona. District 1 includes large areas in the State of Utah and has its headquarters in St. George, Utah. Districts 2 and 3 have a combined

headquarters office in the Federal Building in Phoenix. District 4 has its headquarters in Safford, Arizona, and embraces an area within New Mexico.

9.06 Bureau of Indian Affairs Offices

The Bureau of Indian Affairs (BIA) office in Albuquerque, New Mexico, maintains a "title plant" for lands, which are embraced within Indian reservations in Arizona. The agency office of each reservation also maintains records of the land within its reservation. The BIA area office for the Navajo Reservation is in Gallup, New Mexico, but the agency office at Window Rock, Arizona, maintains records of lands within Arizona. Agency offices and Indian reservation land records maintained therein are as follows:

Agency	Reservation
Colorado River Parker, Arizona	Camp Verde Hualapai & Big Sandy
	Colorado River Havasupai
	Fort Mohave Yavapai-Prescott
	Fort Yuma
Fort Apache Whiteriver, Arizona	Fort Apache
Hopi	Hopi
Kearns Canyon, Arizona	Kaibab
Papago	Papago
Sells, Arizona	San Xavier
	Gila Bend
Pima	Gila River
Sacaton, Arizona	Maricopa (Ak Chin)
Salt River	Salt River
Scottsdale, Arizona	Fort McDowell
San Carlos	San Carlos
San Carlos, Arizona	
Navajo	Navajo
Window Rock, Arizona	

9.07 National Forest Office Locations in Arizona

Each national forest has a headquarters office that maintains the records of land within its jurisdiction. The national forests within Arizona and their office locations are as follows:

- a. Kaibab National Forest, Williams, Arizona
- b. Prescott National Forest, Prescott, Arizona
- c. Coconino National Forest, Flagstaff, Arizona
- d. Apache-Sitgreaves National Forest, Springerville, Arizona
- e. Gila National Forest, Silver City, New Mexico
- f. Tonto National Forest, Phoenix, Arizona
- g. Coronado National Forest, Tucson, Arizona

9.08 Bureau of Reclamation Office Records

The Bureau of Reclamation has a regional office located in Boulder City, Nevada, which maintains records of all its projects in Arizona. The local office of a particular reclamation project also keeps the records of its project affairs.

9.09 Department of Defense Title Records

The Phoenix office of The Branch of Realty of the U. S. Army, Corps of Engineers, maintains records for such governmental agencies as the Department of Defense, U.S. Army, and Air Force.

9.10 State Land Department Title Records

The Arizona State Land Department (ASLD) maintains the records of all lands that have been transferred from the United States to Arizona. The basic records are tract books, which indicate the status of, and all matters affecting the land after the state acquired title. This office has a sales division that keeps the records on all sales of state land, and a leasing division that keeps the records of all state land under lease. If the land under search has been set aside or withdrawn for use by the Bureau of Reclamation, the Department of Defense, or any other federal agency, the examiner determines if there are other matters which are necessary for the preparation of the title reports.

9.11 The County Assessor's Office

Each county in the state has a tax assessor, and most, if not all, of these offices have maps or plats of the various parcels of private land within the county and the names and addresses of the owners. Since the primary purpose of this office is to assess property for tax purposes, the records are not necessarily accurate or up to date as to descriptions and owners.

9.12 County Recorder's Office

Each county has a county recorder's office in which all instruments affecting title to real property is, or should be, recorded. The recorder makes a copy of the original instrument by photo static or microfilm process, and places the copy in a docket, which is made in book form.

9.13 Indices Maintained by County Recorder's Offices

a. Each county recorder's office maintains an index by names of parties to all recorded instruments. The Arizona Statutes provide that the county recorders shall maintain the indices hereinafter listed. A complete search of these indices should enable the examiner to determine the ownership of the subject property. There may be a variation from county to county as to the exact title given to a particular index, but the list indicates the subjects to be indexed.

1. Deeds – direct
2. Deeds – reverse
3. Mortgages, realty – direct
4. Mortgages, realty – reverse
5. Mortgages, personalty – direct
6. Mortgages, personalty – reverse
7. Release of mortgages, realty – direct
8. Releases of mortgages, realty – reverse
9. Releases of mortgages, personalty – direct
10. Releases of mortgages, personalty – reverse
11. Powers of attorney
12. Leases – direct

13. Leases – reverse
14. Assignments of mortgages and leases – direct
15. Assignments of mortgages and leases – reverse
16. Official bonds
17. Mechanics and materialmen's liens - direct and reverse
18. Attachments - direct and reverse
19. Judgments – reverse
20. Lis Pendens
21. Separate property of married individuals
22. Mining locations
23. Partnerships – reverse
24. Federal tax liens – reverse

b. The Statutes also provide that the county recorders may maintain such other indices as may be necessary and in such form as the recorder, with the consent of the Board of Supervisors, may prescribe. Without limitation, the following other indices have been found in one or more counties here in Arizona:

1. Notices affecting real estate
2. Promiscuous records
3. Miscellaneous records
4. Contracts and agreements
5. Releases, assignments, and renewals of judgments
6. Patents
7. Water rights
8. Corporations
9. Mining locations - name of claim
10. Mining deeds
11. Homesteads
12. Appointments – direct
13. Exemptions
14. Conditional sales contracts in the foregoing lists, no particular significance should be attached to either the numbering or the order.

9.14 Arizona Department of Water Resources (ADWR)

The Arizona Department of Water Resources (ADWR) tracks registered wells and water rights. The ADWR website provides this information on Water Resource Data and the Groundwater Site Inventory (GWSI).

Chapter 10 Waiver – Title Insurance and Escrow

10.01 Purpose

The purpose of this chapter is to present the procedures to be followed when the acquisition file includes a request to waive title insurance and escrow.

10.02 Waiver Approval Procedures

Upon a receipt of an acquisition file containing a request to waive title insurance and escrow, the title report will be updated if necessary. Approval procedures are based on the amount of the transaction.

- a. When the amount of the transaction is \$20,000.00 or less, and if the R/W Titles Section Manager decides to waive title insurance and escrow, “A & B Waiver of Title Insurance & Escrow [2 types]”, (Exhibit 18.05) will be prepared and signed by the R/W Titles Manager. The file will then be returned to R/W Acquisition Section.
- b. When the amount of the transaction is more than \$20,000.00 and if the R/W Titles Section Manager's decision is to recommend the waiver of title insurance and escrow, a memo of justification and recommendation will be prepared and signed by the Manager. The file will then be forwarded to the Right of Way Administrator for approval or concurrence.
- c. Upon completion of any or all of these steps, the file will be returned to the R/W Titles Section and then forwarded to R/W Acquisition Section.
- d. The R/W Titles Section Manager may also approve taking title subject to certain encumbrances or requirements.

Chapter 11 Condemnation Organization and Responsibilities

11.01 Purpose

The purpose of this chapter is to present the organization and responsibilities of the Condemnation Function.

11.02 Responsibilities

The Condemnation responsibilities are, but not necessarily limited to:

- a. Assisting the Attorney General's Office, in the preparation and prosecution of condemnation actions.
- b. Maintaining a calendar of current condemnation actions, including dates of scheduled witnesses to insure their appearance. This function may also be assigned to the Condemnation Liaison.
- c. Aid in procuring and preparing documentary and graphic exhibits for use by the trial attorney.
- d. Reporting to R/W Administration on matters related to condemnation.
- e. Providing assistance to other R/W Sections on matters pertaining to condemnation.
- f. Providing in-service training for the staff on Condemnation Functions.
- g. Screening all correspondence to the Office of Legal Advisor from the R/W Titles Section.
- h. Disseminating all correspondence or verbal directions from Legal Advisor to the proper Section.

11.03 Organization

A R/W Agent III or a R/W Agent II perform the Condemnation Function.

11.04 Supervisory Personnel

The R/W Titles Manager is responsible for the management, operation, and production of the Condemnation Function. The R/W Titles Manager will designate a staff member to assume the duties and responsibilities as needed.

Chapter 12 Condemnation General Procedures

12.01 Purpose

The purpose of this chapter is to present those procedures which generally apply to the operation of the Condemnation Function. It should be understood, however, that at certain times deviations from the procedures as outlined may be necessary. When deviations are necessary, the R/W Titles Section Manager or the designee shall outline the course of action that will best fit the circumstances.

12.02 Definition of Terms

- a. Eminent Domain: Eminent domain is the power of the state to take property for public use without the owner's consent upon payment of just compensation. When negotiations with property owners have failed, or title defects or other matters make a negotiated settlement impossible, the right of the State of Arizona to institute eminent domain or condemnation proceedings must be invoked.
- b. Chief Counsel: The Chief Counsel is an Assistant Attorney General who has been assigned to ADOT by the State Attorney General, at the request of the Director, ADOT, to serve as Chief Counsel in all ADOT legal matters.
- c. Legal Advisor: The State Attorney General, in accordance with Section 28-109 of the Arizona Revised Statutes, is the state's Legal Advisor in all highway matters.
- d. Fee Attorneys: Fee attorneys are hired under contract by the Chief Counsel when the staff attorneys of the Office of Legal Advisor cannot process all the cases because of heavy court schedules, or when special expertise is required for a particular case, in which the use of a fee attorney is in the best interest of the state.
- e. General R/W matters: The Condemnation Unit supports the Chief Counsel and their staff, but it is a Unit within R/W Titles Section, reporting to the R/W Titles Section Manager.
- f. Organization Chart: A functional organization chart depicting the relationship of the Chief Counsel and the Office of Legal Advisor with the Project Delivery and Operations Division is shown in Volume 1 of ADOTM-1.

12.03 ADOT's Office of Legal Advisor

The Chief Counsel is responsible for the direction and operation of the Office of Legal Advisor, under jurisdiction of the ADOT Director. A staff of Assistant Attorneys General is assigned from the State Attorney General's office to assist the Chief Counsel in administration of all legal matters of the ADOT. All secretarial and clerical functions are performed by legal secretaries, stenographers, and clerks who are employees of ADOT.

12.04 Determination and Approval to Condemn

The determination to institute condemnation proceedings shall be made by the R/W Acquisition and Project Management sections, with the concurrence of a Right of Way administrator. All

pertinent data is prepared and submitted to the R/W Operations Section on the Transaction and or Directors Report. It is the responsibility of the Condemnation Unit to initiate this report.

12.05 Preparation and Filing of Condemnation Actions

All action for condemnation shall be brought to the Superior Court of the county in which the property is located. The state may, at the time of filing the complaint, or at any time thereafter, make application to the court for an order permitting immediate possession and use of the property sought to be condemned.

- a. It shall be the responsibility within the Condemnation Function in R/W Titles to assemble all the data required by the Office of Legal Advisor for preparation of the complaint. This responsibility shall include, but not be limited to, a thorough search of all title reports and records pertaining to the property sought to be condemned.
 1. The Office of Legal Advisor shall be furnished the names of all owners and claimants of the property, if known, or a statement that they are not known, and an affidavit as to how the search was conducted.
 2. Since the land sought to be condemned is for specific right of way, the location and general route and a map thereof shall be furnished.
 3. A description of each piece of land sought to be taken will also be furnished, together with information showing whether the land includes the whole or only a part of an entire parcel or tract. ADOT's Office of Legal Advisor shall prepare the complaint.
- b. After the complaint has been prepared, as part of a condemnation function it shall be filed in the Superior Court for the county in which the property is located.

12.06 Possession of Property

- a. Upon filing the application, a time for hearing shall be fixed and notice thereof served personally upon the parties in interest within the state by publication, or by registered mail if out of the state, in such a manner as the court directs. Servicing of this notice or verification of the servicing thereof is a condemnation function.
- b. On the date of the hearing, if it appears that the use for which the property sought to be condemned is a necessary use, the court will receive evidence as to the probable damages to each person having interest in each parcel of land sought and, upon the deposit of security as directed by the court, the state shall be let into the possession and full use of the parcels of land as described in the order.
- c. Assurances shall be made that the appraiser and other witnesses, Exhibits, photographs, maps, or other evidence required by the trial attorney are available at the time of the hearing. It is a condemnation responsibility to insure that the security deposit is posted as directed by the court.
- d. The R/W Property Management, R/W Acquisition, and R/W Project Management sections shall be informed of the scheduled dates of all hearings; the date of possession

of improved properties, and assistance is given to R/W Property Management Section in the taking of physical possession of the property involved.

Chapter 13 Condemnation Legal Responsibilities

13.01 Purpose

The purpose of this chapter is to describe the Condemnation Legal responsibilities and procedures. When, because of unique situations, deviations from the ordinary function must occur, the Condemnation Unit Leader shall choose the course of action.

13.02 Condemnation Responsibilities

It is a condemnation responsibility to furnish all necessary information to the Office of Legal Advisor of ADOT required in the preparation of the various legal documents of a condemnation action. When it is determined that condemnation is necessary, with the approval of the Right of Way Administrator, permission is requested to condemn from the Deputy State Engineer, Highway Development Group. All necessary documents are prepared, the R/W parcel file is studied for information, and a legal file created. Inquiries are made as to when the file is to be ready for the ADOT Office of Legal Advisor and condemnation procedures and plats are prepared. After the pleadings are prepared, the condemnation action is filed in the Superior Court of the appropriate jurisdiction.

13.03 Condemnation Function Aids Right of Way Administrator

Data is gathered for presentation to assist the Right of Way Administrator in determining when condemnation proceedings may become necessary. A condemnation action may be necessitated due to an impasse in R/W Acquisition Section negotiations, title defects, or other causes.

13.04 Record Receipt of Parcel File

When the parcel file is received in Titles, the date of receipt will be entered in the project parcel inventory and in the computer data bank.

13.05 Acquisition Package

The acquisition package will be disassembled and the original copy of each document contained therein will be inserted into the R/W parcel file. A complete copy of the acquisition file is assembled by the Condemnation Unit for use of the Office of the Legal Advisor of the ADOT. The empty acquisition file folder is then returned to R/W Acquisition Section for re-use.

13.06 Preparation of the Legal File

- a. The title report for the parcel to be condemned will be thoroughly examined to determine if the information regarding ownership is accurate and complete when compared to the information developed by the Acquisition Agent, as shown in the parcel file, and that the title report is less than one month old.
- b. When the title report is one month old or older, or when it differs greatly with other ownership information contained in the parcel file, a request is prepared for an updated title report. R/W Titles personnel will prepare an updated title report. One copy of the

delineation request will be retained in the parcel file. One copy of the current report or, when available, the updated title report, will be placed in the legal file.

- c. When it appears that the property is held in trust, all documents required by ARS 37-801 are prepared and the trustee is named as the defendant, as shown in 13.10(f), (g) and (h) herein.

13.07 Preparation of Property Description and Plat

- a. A condemnation property description will be prepared for the required parcel, which will include the following information:

1. Project
2. Highway
3. Section
4. Parcel
5. Date of preparation
6. Title of the case
7. Preamble(s) identifying type of interest
8. General location of property
9. Specific description of property to be taken
10. Existing rights of way
11. Any access rights being taken, limited, or defined
12. Area of property to be taken
13. Any other rights required, i.e., construction easements, right to temporarily enter the remainder in order to remove an improvement.
14. Conditions relative to reversion of certain rights.

- b. A plat will be prepared which will set forth the property being sought. The plat will be plainly marked as "Exhibit B" of the condemnation action, and initialed by the person preparing said documents. Copies of the property description and the plat will be made and placed in the legal file.

13.08 Recommendation and Resolution Establishing the Highway

One certified copy of such recommendation and resolution will be obtained from the ADOT Director and will be placed in the legal file.

13.09 Preparation of Vicinity Map

When the recommendation and resolution does not contain a legal description of the project, the Condemnation Unit will prepare sufficient copies of the project vicinity map for inclusion in the legal pleadings and for adequately processing the condemnation action. The vicinity map will be marked as "Exhibit C" of the action and all copies will be placed in the legal file.

13.10 List of Parties Defendant and Exhibit D

a. The current or updated title report, the Acquisition Agents contact report, and all pertinent documents and information in the acquisition package will be examined. On the basis of facts gained from the examination, a "Party Defendants List", (ADOT Form 60-4304, Exhibit 18.06) listing the following information will be prepared:

1. Project number.
2. Highway.
3. Section.
4. Parcel number
5. County.
6. Name of each defendant.
7. Address of each defendant.
8. Type of interest of each defendant.
9. Pertinent comments relative to the particular action.

10. In the event the address of any party defendant or defendants is unknown, submit all information showing details of an exhaustive and thorough search made to determine whereabouts of each unknown defendant. The said information is to be used as the basis of an affidavit to be filed with the court at the time the action is instituted.

The original copy of the list will be placed in the parent parcel file and the duplicate copy will be placed in the legal file.

b. An Exhibit D shall be prepared in the same way as The List of Parties Defendant except that the Exhibit D shall only include the following information:

1. Project Number.
2. Highway.
3. Section.
4. Parcel number.
5. County.
6. Name of each defendant.
7. Type of interest of each defendant.

13.11 Assembling the Legal File

a. At this point, a "Condemnation Check Sheet", (Exhibit 18.07) will be attached to the outer front side of the legal file folder. All documents prepared for the legal file as outlined in the foregoing sub-paragraphs will be reviewed and placed in the legal file and checked off on the Condemnation Check Sheet. The assembled legal file must contain the following:

1. One certified copy of the recommendation and resolution establishing the highway.
2. Sufficient copies of the condemnation legal description of the required property.
3. Sufficient copies of the plat showing the required property.
4. One copy of each appraisal prepared by staff or fee consultant.
5. One copy of current title report.
6. Sufficient copies of the vicinity map, when required.
7. Parties Defendant.
8. Exhibit "D"
9. One copy of the acquisition contact report; and

10. One copy of the "Condemnation Transmittal Memo", (Exhibit 18.12).
- b. Other information, which shall be entered on the condemnation check sheet, is as follows:
1. Parcel number;
 2. Owner;
 3. Highway;
 4. Section,
 5. Project number;
 6. Date of approval to condemn; and
 7. Any remarks pertinent thereto.

13.12 Submittal of Legal File

When the legal file is assembled with all the necessary information, it is transmitted to the Attorney General's Office, Transportation Division. A letter is transmitted with the file giving the following information.

Date:	Section:	Date Received:
Project:	Parcel No.:	Date to A.G.
Highway:	Owner:	

13.13 Parcel File Submitted to R/W Records Center

At this point, the "Condemnation Record", (Exhibit 18.08) in the parcel file will be appropriately updated to reflect the current status of the condemnation parcel. The information is also entered in the database on the computer.

13.14 Instituting the Condemnation Action

- a. The Office of Legal Advisor will prepare all of the necessary pleadings required in the condemnation action and notify the Condemnation Unit as to which attorney is assigned to the case. The Condemnation Unit will update the database and Condemnation Record as to which attorney has been assigned to the case.
- b. The original copy of the complaint, and any pertinent related pleadings, will be filed with the Clerk of the Superior Court in the county in which the required property is located. The Clerk will be requested to issue a summons for the action.
- c. After the case has been filed with the appropriate Superior Court, the Office of Legal Advisor will send a copy of the complaint bearing the Clerks stamp and any summons to the Condemnation Unit. The Condemnation Unit will update the database and the Condemnation Record with the date the case was filed and the cause number.
- d. The condemnation action will be discussed with the judge having legal jurisdiction over the matter and a date for the Order to Show Cause hearing will be set. The signature of the judge will be obtained on the original copy of the Order to Show Cause. The original copy of the Order to Show Cause will be delivered to the Superior Court

Clerk where the case was originally filed. The Office of Legal Advisor will send a copy of the OSC to the Condemnation Unit. Upon receiving the OSC the Condemnation Unit will do the following:

1. Update the database and the Condemnation Record with the OSC date.
 2. Notify all of R/W of the OSC hearing date. Such notification shall include the following information: project number (route, county, milepost, TRACS), highway name, section, parcel number, owner name, date the case was filed, OSC date, attorney assigned to the case and R/W agent working he case.
- e. When publication of legal notice of the action is required, the following items will be furnished to the appropriate newspaper:
1. One certified copy of the Order to Show Cause.
 2. One copy of the summons.
 3. Adequate instructions and dates for publication of the legal notice within the time required.

13.15 Post Trial Functions of Office of Legal Advisor

- a. When the condemnation case has been tried in court, or settled by stipulation, and a judgment has rendered, the Office of Legal Advisor will submit, the R/W Condemnation Unit a copy of the judgment.
1. Its receipt shall be properly recorded in the Condemnation file and database.
 2. The judgment will be reviewed to ascertain the following:
 - (a) That the interests of all defendants named in the action have been adjudicated;
 - (b) That the legal description of the judgment contains the latest, and proper, information.
 3. When the information of the judgment is correct and a Settlement Report has been signed by proper authority, it will then be sent to the R/W Operations Section for payment. When payment has been made, R/W Operations will notify the Condemnation Unit. At that time, the appropriate State's Attorney will be notified that payment has been made.
 4. When discrepancies are found in the legal description of the judgment, the Condemnation Unit shall make inquiry and notify the following: R/W Plans Section, the Project Coordinator, the State's Attorney and the Condemnation Liaison to see if corrections need to be made and if an amended judgment needs to be filed with the court.
- b. When the judgment of a condemnation action has been satisfied by the state, the court will issue a final order of condemnation. The Office of Legal Advisor will submit a copy of such order to the Condemnation Unit.

The Final Order of Condemnation will be reviewed to ascertain the following:

1. That the terms of the order coincide with the terms of the judgment;

2. That the legal description of the order is identical to the legal description of the judgment;
3. The order will be recorded by the Condemnation Unit in the proper jurisdiction(s).

13.16 Legal Description of the Property Taken

- a. The description of the complaint prepared will contain:
 1. TRACS Number/Federal ID Number (If applicable),
 2. Name of the principal highway;
 3. R/W Section number;
 4. Parcel number;
 5. Date of preparation of the description.
- b. The title of the condemnation shall refer to the principal owner shown by the title report. For this purpose, the principal owner is the person or corporation having a fee interest, directly or in trust, who by warranty deed or other instrument may convey title to the state. A person purchasing under valid contract is considered a fee owner as fee owner holds equitable title and would be a fee owner, if their contract were fully executed.
- c. The preamble of the description shall form an introduction to the specific description and shall contain the nature and extent of the estate to be acquired by the state in the condemnation action. The preamble shall describe the general location of the land using the U.S. Geological Survey subdivision, section, township, range, meridian, county, and state, or within a dedicated sub-division of a city or county, giving reference to the recording data of the dedicated plat. Following the general location of the land, the particular highway, for which this parcel or parcels are being sought, shall be indicated by reference to the standard highway designation format.
- d. The specific description of the property to be acquired shall be set out by metes and bounds, if practical. Alternatively, if a metes and bounds description is not possible to obtain, or too extensive, a line or lines of description shall be tied to legal subdivisions, or to known property lines. Centerline descriptions shall be used only when no other description is practical.
- e. The amount of land sought to be taken shall be stated in acreage or square feet or meters for each parcel. This amount must be the same as reflected in the ownership sheet of the right of way plans map and should also agree with the amount contained in the appraisal. Any variation between these amounts must be resolved prior to submitting the description to the ADOT Office of Legal Advisor.
- f. Any parcel to be acquired by the State lying within the permanent right of way, and to be used exclusively for highway purposes, shall be acquired by obtaining a fee simple interest.
- g. The wording for a taking will be, "For state or interstate highway purposes, a fee simple estate in and to a parcel of land situated in the Southeast quarter of the Southwest quarter (SE $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 12, Township 13 South, Range 13 East, Gila and Salt

River Base Meridian, Maricopa, State of Arizona, lying within the right of way of the (state or interstate) Highway described as follows: (Description to be taken.)"

- h. When the acquisition calls for a taking of land outside the right of way, where it will be necessary to construct and maintain a facility such as a drainage ditch, dyke, slope, channel change, or temporary construction feature, the type of taking shall be clearly indicated. This may be either permanent or temporary in nature. Such facts shall be reflected in the preamble.
- i. In certain cases, the easement required will be a type where the abutting owner will have certain rights of use of the area, such as a drainage ditch or slope easement, where grazing will be permitted, or other limited use not inconsistent with the state's requirements. In any case, for an easement for such purposes, there shall be no fence or wall, which will preclude such use of the land or entry thereon. Any taking, which would require fencing or exclusion from the area, must be considered to be part of the right of way, and in such a case, a fee simple estate will be acquired. This fact shall be thoroughly investigated and determined before deciding into which category it shall be placed. The fact that a parcel may have been designated as an easement prior to reaching condemnation is not necessarily a true indication of its nature. Each case shall be carefully considered according to the facts surrounding the acquisition and the construction plans examined to determine how the property will be affected. The type of easement will indicate the language to be used in the descriptions. However, each case may require variations to cover the exact nature of the taking.
 - 1. For a slope easement, the wording will be "For highway purposes, a perpetual easement to construct and maintain a highway slope over and across a portion the Southwest quarter of the Northwest quarter (SW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 12, Township 2 South, Range 3 East, Gila and Salt River Base and Meridian, Maricopa County, State of Arizona, described as follows: (Description of land taken for the easement)." Following the specific description, the following clause shall be inserted, if appropriate: "Reserving unto the owners of the above described parcel of land, their successors or assigns, the right to use and occupy said land for purposes not inconsistent with the construction and maintenance of said highway slope."
 - 2. For a drainage or dyke easement, the wording will be "For highway purposes, a perpetual easement to construct and maintain a drainage ditch (the exact specific feature must be set out) over and across a portion of the Southwest quarter of the Southeast quarter (SW $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 15, Township 3 North, Range 5 East, Gila and Salt River Base Meridian, Coconino County, State of Arizona, described as follows: (Description of land covered by easement)." Again, the reservation clause shall be used and made suitable to the type of construction feature required for the easement, such as: "Reserving unto the owners of the above described parcel of land, their successors or assigns, the right to use and occupy said land, provided said use shall not in any way conflict with or obstruct adequate drainage or maintenance of said drainage ditch."
 - 3. In cases of construction easements, the exact purpose and use of the land must be delineated, such as a detour, haul road, turn-out, overpass, or other construction requirement: "For highway purposes, a temporary easement for construction of a "detour road" over and across a portion of the Southwest

quarter of the Southeast quarter (SW¹/₄SE¹/₄) of Section 14, Township 2 South, Range 3 East, Gila and Salt River Base and Meridian, Maricopa County, State of Arizona, described as follows: (Description of property covered by easement)."

13.17 Description of Access Rights

- a. Following the general description, a description of access rights generally will follow. When applicable, the access clause shall follow the specific description and shall refer to the highway to be constructed, or specific parts thereof, wherein access will be denied, limited, or permitted, and also setting forth any point or points of limitation.
- b. The right of access is generally considered to be a right appurtenant to real property abutting upon an existing road, street, or highway. Although the right of access does not exist along every foot of the of the abutting property, any denial or substantial impairment of these rights will normally require that compensation be paid as damages to the property, as reflected by a proper appraisal.
- c. When a limited access highway facility is to be constructed in substantially the same location as a prior existing highway, road or street, and additional right of way is to be acquired to accommodate said construction, it is essential that the right of access be extinguished by proper recitation in the complaint.
- c. If access is to be denied a parcel of abutting land, it is necessary to extinguish the right of access by proper recitation in the complaint of that right alone when no additional right of way is being required from the ownership.

13.18 Special Assignments

In addition to the functions and procedures outlined in the previous paragraphs of this chapter, the R/W Titles Section is at various times as required, is requested to furnish assistance or expertise relevant to the professional experience and abilities of personnel within the Section, for other Divisions and Sections within ADOT, and for other agencies and groups within the state government.

- a. Listed below are some of the typical special assignments performed by the R/W Titles Section:
 1. Provide court testimony.
 2. Perform legal research.
 3. Perform special research of court and public records relative to specific cases being processed by the Attorney General.
 4. Furnish an opinion based on Arizona Revised Statutes to R/W Agents in regard to title problems, settlement procedures for estates, etc.
 5. Furnish an opinion based on Arizona Revised Statutes and assistance in research and preparation of special recommendations and resolutions for Transportation Board consideration.

6. All requests for opinions of the Attorney General will be submitted to the ADOT Office, through the R/W Titles Section.
- b. Requests for special assistance by the Titles Section will generally be processed through the R/W Titles Section Manager. In certain instances, however, requests for special assistance may come directly from the requesting party to the R/W Titles Section. In such instances, the individual performing the condemnation functions will be informed by the R/W Titles Section Manager.

Chapter 14 Condemnation Procedures

14.01 Purpose

The purpose of this chapter is to describe the responsibilities and general procedures of the Condemnation Function.

14.02 Responsibilities

The Condemnation Functions is responsible for furnishing support to the Office of Legal Advisor of ADOT and particularly to the State's Trial Attorney in all matters pertaining to a condemnation action subsequent to the filing of the complaint.

- a. Maintains a calendar of assigned condemnation actions.
- b. Assists the trial attorney during the course of a trial.
- c. Confirms the information contained in the parcel file.
- d. Requests additional data when required.
- e. Coordinates Exhibits with the Graphic Artists in the R/W Plans Section.
- f. Coordinates with various sections, services, and districts of ADOT for data and testimony as needed.

14.03 Preparation for Trial

Normally, by the time a condemnation action is tried, construction on the project is underway or virtually completed. Buildings or other improvements within the acquired portion may have been demolished and removed. Because this action must be filed prior to letting bids for construction, the "before" photographs (aerials for appraisal) must be studied. If, in the opinion of the trial attorney, additional photographs, plans, or Exhibits are required, this will be a condemnation function, when applicable.

14.04 Field Investigations

- a. Field investigations, when applicable, will be performed to confirm factual data and to discover other characteristics, which may be peculiar to the particular parcel of land being investigated, and which may be contentious in trial. Some of the facts to be considered in the field investigations are:
 1. Topography;
 2. Flora;
 3. Drainage;
 4. Fencing (type, conditions, locations, etc.);

5. Availability of water;
 6. Type of soil;
 7. Improvements (if any);
 8. Measurements of improvements (or any distance which may be a factor in trial);
 9. Relationship of the highway improvement involved, such as:
 - (a.) Access to the property prior to highway improvement;
 - (b.) Access after highway improvement;
 - (c.) What impairment of access will be caused?
 - (d.) Any effect the highway will have on the "before" and "after" level of the property;
 - (e.) Drainage improvements.
- b. During the field investigation, the investigator will take photographs of the land being investigated. This procedure is followed so that if any questions arise during the trial regarding the land, highway, or their relationships with each other, a photograph will be available to correctly show the subject.

14.05 Other Condemnation Duties

- a. Another condemnation duty is to keep all interested parties informed of the status of all condemnation actions, trial dates, scheduled court appearances, and changes in scheduled disposition of the action.
- b. To obtaining approval if an expert witness is required by the trial attorney.

Chapter 15 Recording of Condemnation Data

15.01 Purpose

The purpose of this chapter is to describe the routine handling, transmittal, recording, and storage of condemnation data.

15.02 Receipt of Acquisition Package

After the determination to condemn is made, R/W Acquisition will transmit an acquisition package to the Condemnation Unit.

15.03 Transaction Report

If the decision is made to condemn, a “Parcel Transaction Report Form”, (ADOT 60-2310, Exhibit 18.09) will be prepared for each parcel for permission to condemn and transmitted to R/W Operations Section. The R/W Operations Section Manager is notified of any pending judgments to be paid, project number, amount, date, and amount of cash bond.

15.04 Procedure for Routing and Recording Acquisition File

After the acquisition package, with the transmittal sheet, is received from R/W Acquisition Section, the data is entered into the condemnation data base. All pertinent information is entered.

15.05 Posting of Bonds

Article 2, Section 17, of the Arizona State Constitution provides that the amount required to be deposited for obtaining immediate possession in eminent domain proceedings may be secured by surety bond or cash deposit. In order to gain an Order of Immediate Possession, the following course of action is taken.

- a. **Surety Bonds**
 1. The ADOT Office of Legal Advisor will deliver a copy of the OIP (typically this is a scanned copy of the original OIP and via email) to the Condemnation Unit. It will immediately be transmitted to R/W Operations to make the deposit.
 2. Once the certified copy arrives, the Condemnation Unit will record it in the County Recorder’s Office in which the property is located.
 3. Once recorded, a copy of the recorded OIP and a “County Assessor Notice Letter” is sent to the appropriate county assessor office informing them to remove the property from the tax rolls. A copy of both is also sent to the ADOT Office of Legal Advisor. A scanned copy of the recorded OIP is hyperlinked to the Condemnation Database.

4. Update the Condemnation Database including when the bond (or cash deposit) was made and the amount.
 5. Notify the ADOT Office of Legal Advisor using "Payment Notification Letter" (ADOT Form 60-8904, Exhibit 18.11.)
- b. Cash bonds: When a cash bond is posted, the above procedures, plus all of those listed below, are followed:
1. Send a copy of the OIP (can be a scanned copy of the original) to R/W Operations so that the deposit can be made.
 2. The Office of Legal Advisor is notified of the date and amount of the cash deposit by a Payment Notification form ADOT 60-6308.
 3. The R/W Group will be notified of the OIP deposit. Such notification will include: the project, section, parcel, owner, OIP amount, OIP deposit date, ADOT attorney and the R/W Agent.

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- c. After payment by the ADOT Accounting Section:
1. A parcel payment notice is sent from the R/W Operations Section to the R/W Titles Section to verify the date of payment.
 2. The State's Attorney is notified of the amount of the judgment and that it has been paid to the Clerk of the Superior Court.
- d. Final Order of Condemnation:
1. Two certified copies of the Final Order of Condemnation are received from the ADOT Office of Legal Advisor.
 2. Descriptions are checked.
 3. R/W Operations Section has the order recorded in the proper county.
 4. The information from the recorded copy of the order is posted in the Condemnation data base computer and on the condemnation record sheet in the parcel file.
 5. The R/W Parcel File is sent to R/W Operations Section to be closed out.

15.06 Payment of Judgments

The condemnation procedures for payment of judgments are as follows:

- a. The ADOT Office of Legal Advisor will deliver a copy of the judgement (typically this is a scanned copy of the original judgment and via email) to the Condemnation Unit. When able, the ADOT Office of Legal Advisor will send a certified copy to the Condemnation Unit.
- b. A check is made to ascertain whether the case has been placed on the Transaction Report for approval of payment.
- c. If the case has been placed on the Transaction Report for approval of payment, the Condemnation Unit will transmit the judgment to R/W Operations for payment.
- d. After payment, R/W Operations will notify the Condemnation Unit that payment has been made and include copies of interest calculations and the "One-Time Wire Out".
- e. The Condemnation Record and the Condemnation Database will be updated with the judgment payment information.
- f. The Condemnation Unit will notify the State's attorney using the "Payment Notification Letter" (ADOT Form 60-8904, Exhibit 18.11.)

15.07 Settlements Without Trial

When, prior to the trial of a condemnation action, the State's Attorney and the defendant reach an agreement that is acceptable to the defendant, and appears to be in the best interests of the state, the attorney may propose that the action be settled without trial. In proposing a settlement without trial, the attorneys documented recommendations are submitted on the form, "Report and Recommendations of Settlement Without Trial."

- a. When a settlement without trial is approved by the Condemnation Support Team and the Right of Way Administrator, the necessary information is put on the Transaction Report.
- b. Assurance is made that the recommended settlement is fully documented and supported in accordance with 49 CFR 24.102(i):

Condemnation settlement. The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves such condemnation settlement as being reasonable, prudent and in the public interest. When Federal funds pay for or participate in acquisition costs a written justification shall be prepared which indicates that available information (e.g., appraisals, recent court awards, estimated trial costs, or valuation problems) support such a settlement.

This documentation must clearly support an opinion that the condemnation settlement is justified and in the best public interest.

- c. If the condemnation settlement without trial is approved by the Right of Way Administrator, the ADOT Office of the Attorney General will prepare a judgment for the courts signature and process through the R/W Titles Section.

15.08 Final Order of Condemnation

The ADOT Office of Legal Advisor will send a certified copy of the FOC to the Condemnation Unit for recording. After recording the Condemnation Unit will do the following:

- a. Hyperlink a copy of the recorded FOC to the Condemnation Database.
- b. Update the Condemnation Database and the Condemnation Record.
- c. Send a copy of the recorded FOC to the State's attorney.
- d. Notify R/W Group of the FOC including the following information: project, highway, section, parcel, owner, date FOC was signed, date it was recorded and recording number.
- e. Request a copy of the release lis pendens (if it has not already been received) for recording. After the release is recorded, a copy of the recorded release is sent to the State's attorney, the "AG ACTIVE" box in the Condemnation Database is de-checked and the condemnation file is submitted to R/W Operations for closeout.

Chapter 16 Property Tax Resolutions

16.01 Purpose

The purpose of this chapter is to outline the procedures when R/W Titles Section receives a notice for property taxes on ADOT-owned Property.

16.02 Title Companies Notification

The State of Arizona is exempt from paying real property taxes from the date of purchase, which is the recorded deed date. The following instructions are included in the R/W Acquisitions Purchase Agreement to the assigned Title Company:

- a. Total Acquisition of Grantor's Property: Full release of all monetary liens and encumbrances, and leases of any kind. Pay in full all due and delinquent real property taxes and general and special improvement assessments. Prorate the current year's real property taxes on closings that occur on or after the 3rd Monday of August each year. Escrow Agent shall withhold the prorated amounts from each party and pay the lien of the current year's taxes in full.
- b. Partial Acquisition of Grantor's Property: Partial release of all monetary liens and encumbrances, and leases of any kind. At the discretion of State, pay due and delinquent property taxes and general and special improvement assessments, including full payment of taxes and assessments on individual assessor parcels within State's partial acquisition, and any Certificate(s) of Purchase (C.P.). The current year's taxes shall not be prorated regardless of the closing date.

16.03 Non Compliance by Outside Entities

When the Assessor's Office fails to reflect the purchasing instrument, or the Title Company fails to pay all real property taxes in accordance with chapter 17.02, or for any reason that the R/W Titles Section should receive a notice of taxes due, it is the responsibility of the R/W Titles Section Agent to forward the notice to those responsible and ensure that those taxes and any fines or C.P. are paid immediately, and in full.

The following process should be used to determine where an error might have taken place that caused the notification of taxes due to be sent, and who should resolve the problem:

- a. The R/W Titles Agent will search the ADOT parcel files which should contain the following information:
 1. Instrument used to purchase the parcel with the date of recording.
 2. The R/W Acquisition Section's Purchase Agreement detailing the instructions to the Title Company as referenced in Chapter 17.02.
 - (a.) The agreement indicates a partial or total take, the legal description and size of property purchased.

- (b.) This agreement will include the name of the title company and the escrow agent's name and phone number.
3. The Settlement Statement from Title Company detailing the payments made.
- b. If the determination is made that the Title Company is errant, the R/W Titles Section Agent will contact the Escrow Agent. If the escrow agent, after researching their files, comes to the same conclusion, the R/W Titles Section Agent will request that they contact the Treasurer's Office to determine the amount that will resolve any delinquent taxes. A copy of the check is then forwarded to R/W Titles Section Agent.
 - The R/W Titles Section Agent will apply the ADOT parcel number to the copy of the paid Title Company's check and the Delinquent Tax Notice and forward it to the R/W Records Center to be put in the ADOT parcel file.
 - c. If it is determined that the parcel is in Condemnation, the tax notice should be forwarded to the appropriate R/W Titles Section Agent.

16.04 Records

Because errant tax notices cause a lot of unnecessary work for ADOT, a spreadsheet, entitled Delinquent Taxes and Condemnation Notices was developed to contain the following information for future reference:

- a. The assessor number.
- b. The county the parcel is in.
- c. The ADOT parcel number.
- d. Comments concerning the research and outcome of the notices, i.e., resolution dates and numbers submitted by the Treasurer's Office, etc.
- e. "Hard to Identify". Sometimes a notice is received for property that has been Highway Developed for several years. The information was time consuming and difficult to find in the systems. An asterisk next to the parcel or in a column indicates that the information should be maintained.

Each notice is entered into the spreadsheet each time it is received. If you receive the notice again, the information is already available to you.

Chapter 17 Titles Exhibits

The following Exhibits are intended for reference purposes. Some of the Exhibits have been reduced in size in order to include them in this manual. [Click Here](#) to view the Exhibits.

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