

CHAPTER ONE
ADMINISTRATION

MAINE RIGHT OF WAY MANUAL

August 2018

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CHAPTER ONE

ADMINISTRATION

1-1 ADMINISTRATIVE OVERVIEW

Right of way functions performed by the Maine Department of Transportation (MaineDOT) are the means by which real property is acquired for transportation programs and projects. The right of way program is administered to efficiently deliver real property for project construction while treating property owners and occupants fairly and equitably. **The Fifth Amendment to the US Constitution** provides that private property cannot “be taken for public use without payment of just compensation” to the owner. The Fourteenth Amendment to the US Constitution requires due process of law be accorded to private property owners before the taking of property by the governmental power of eminent domain.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Title 42 **United States Code** Chapter 61 (**Uniform Act**), as amended, and its implementing regulations (49 **Code of Federal Regulations** Part 24) (**CFR**) interpret the legal meaning of the Federal constitutional provisions and define procedures for establishing just compensation and providing due process to property owners. These just compensation and due process requirements apply to all Federally-funded MaineDOT activities, including those carried out by local public agencies and some private parties. Additional provisions affecting right of way functions appear in Title 23 **United States Code**, Chapter 1. Article 1, Section 21 of the Maine Constitution and Title 23 of the **Maine Revised Statutes**, contain state equivalents of the Federal protections.

1-1.01 Purpose and Use of the Manual

1-1.01(a) Overview

The construction and operation of transportation projects frequently involve impacts to people who live or own property on or near the project location. There can be a wide variety of impacts, ranging from the loss of a small part of a home’s front yard to the relocation of a family or business to a new site. The Maine Department of Transportation (MaineDOT) has a legal and ethical duty to ensure that it acquires the property interests necessary for its activities, and that the affected individuals are treated fairly and in accordance with procedures outlined in law and regulation. Personnel performing right of way functions are the principal points of contact between MaineDOT and affected property owners and tenants. Their role is to help avoid and minimize impacts, identify compensable impacts that will occur, and carry out valuation, acquisition and relocation activities in accordance with State and Federal requirements and MaineDOT policies. This *Right of Way Manual* provides information to guide Department personnel, local agencies, and consultants in performing those crucial tasks. In addition, the *Manual* is a declaration to the public, auditors and the Federal Highway Administration (FHWA) as to how MaineDOT performs its property acquisition responsibilities.

This *Manual* describes operating procedures for all right of way functions. These functions include the preparation of right of way plans and title acquisition documents, public information and research, the valuation of property interests, negotiation and acquisition of title, residential and business relocation, property management, contracting procedures and standards, quality assurance/quality control, and various administrative activities. The *Manual* also includes guidance for local public agencies performing right of way functions for transportation projects. Appendices to the *Manual* incorporate important reference material including relevant sections of the ***Maine Revised Statutes Annotated (MRSA)***, and Federal right of way regulations.

All persons with right of way responsibilities, including MaineDOT personnel, local agency personnel, and consultants must use this *Manual* as a reference tool for basic information about how to carry out right of way assignments. Because the *Manual* cannot address every problem or circumstance that may occur, MaineDOT expects and encourages personnel to use independent judgment in carrying out their tasks. The Department also encourages personnel to consult with the Property Office and Senior Property Officers for clarification of right of way procedures and standards, and for assistance with solving specific right of way issues.

1-1.01(b) *Manual* Updates

The Department will revise this *Manual* as relevant laws, regulations, procedures and practices change. In addition, Federal Highway Administration (FHWA) regulations require MaineDOT to update and recertify the *Manual* and obtain FHWA approval for it every 5 years after the approval date of the *Manual* (23 **CFR** 710.201(c)(2)).

The Property Office (see Section 1-1.03(a)) is responsible for timely and necessary revisions to the *Right of Way Manual*. This Office will identify when a modification is needed, coordinate changes with the Bureau of Project Development (Project Development), assign the preparation of new text or other material as appropriate, and submit the revised *Manual* to FHWA for approval on the 5-year cycle. The Department expects Senior Property Officers and other personnel involved with right of way activities to notify the Property Office whenever they believe a revision may be appropriate. The Director of the Property Office and the Chief Property Officer will meet annually with the Director of Project Development to discuss the status of the *Manual* and provide necessary updates.

The *Manual* is divided into sections with sections being represented by the number between the dash and decimal point, for example (1-5.1). Users can determine the publication date of the *Manual* by looking at the page header for the section in question. Whenever the Department revises a section of the *Manual*, within the 5-year cycle, the revision date will appear in the page header for that section.

1-1.02 Department, Bureau and Right of Way Missions

The Department and its organizational units have formal statements that define their purposes and objectives. Personnel performing right of way functions are guided not only by the

statements of the Department and Project Development, but also by a mission statement developed by the Property Office to govern the delivery of right of way services.

The MaineDOT Draft *Strategic Plan* (updated 2016) provides the following guidance:

VISION

To be the most trusted organization in Maine by being open, accountable and responsive

MISSION

Responsibly provide our customers the safest and most reliable transportation system possible, given available resources

CORE VALUES

Integrity – Competence - Service

GOALS

1) MANAGE THE EXISTING SYSTEM

Effectively manage Maine's existing transportation system for safety and effectiveness within reliable funding levels

2) SUPPORT ECONOMIC OPPORTUNITY

Wisely invest available resources to support economic opportunity for our customers

3) BUILD TRUST

Demonstrate our core values of Integrity, Competence and Service both individually and organizationally

1-1.03 Right of Way Organization, Functions and Activities

The right of way function operates within the Department's Project Development Bureau. The organization chart, Figure 1-1, shows the placement and organizational relationships of the Property Office in the Project Development Bureau.

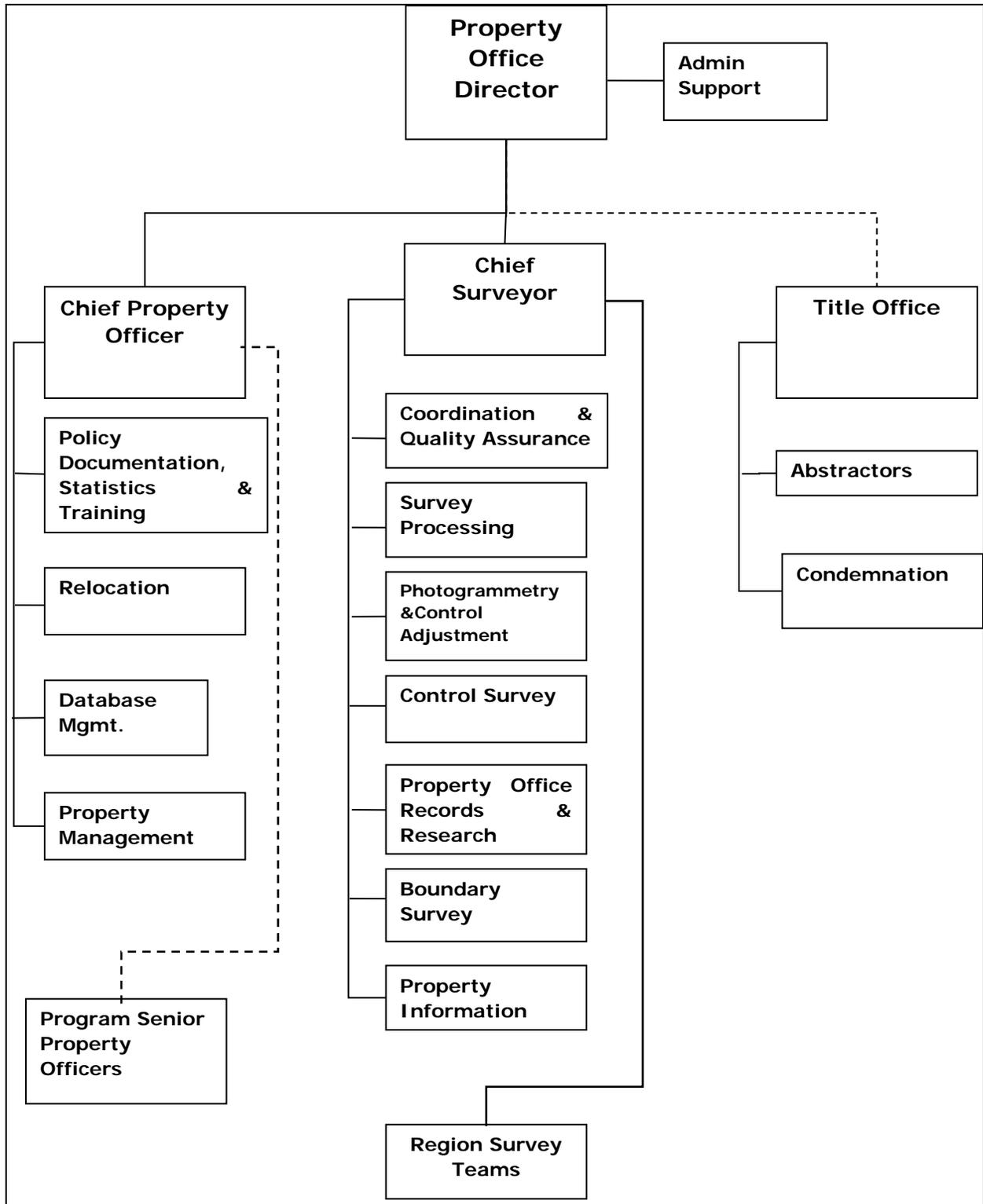


FIGURE 1-1 — Property Office

1-1.03(a) Property Office

The Property Office was formed in July of 2004 as a result of a review of the Right of Way process. The goal of the Property Office is to blend the best elements of an organization with a traditional Right of Way Division with a team based organization. The Property Office provides support for the Programs in the area of the traditional Right of Way functions of appraisal, appraisal review, negotiations, and relocation. Additionally, the Office provides technical support for traditional mapping, utility coordination, title and condemnation functions. The Property Office is responsible for the following functions:

1. Insuring consistency and quality in the performance of right of way activities;
2. Serving as an interface between MaineDOT and FHWA, as well as the American Association of State Highway and Transportation Officials (AASHTO), on right of way issues;
3. Developing and revising MaineDOT Right of Way policies & procedures, including revisions to this *Manual*;
4. Determining core training and experience requirements for Right of Way professionals at MaineDOT; and
5. Guiding the Programs in the delivery of Local Public Agency (LPA) administered projects that include R/W acquisition.

1-1.03(b) Objectives of Right of Way Functions

The overall objective of right of way activities is to help achieve the best balance possible among the competing needs of public transportation facilities and adjacent property owners and tenants. The role of the Property Office team members in recognizing and addressing potential project impacts on people and property begins at the earliest planning stage for a project. That role continues through design, construction, and sometimes operation, of the project. Many right of way activities are shaped by the need to satisfy the requirements of the 5th and 14th Amendments to the U.S. Constitution, and Article I, Section 21 of the Maine Constitution. Those provisions mandate due process in the taking of private property for public use and the payment of just compensation for such takings. Additional standards for right of way actions appear in the **Federal Uniform Act**, 42 **United States Code** Chapter 61, and in Title 23 of the **Maine Revised Statutes**. The **Uniform Act** applies to all projects involving the use of Federal funds in any phase of a project. All MaineDOT activities are subject to Maine State law.

The significance of right of way concerns in the delivery of transportation programs is demonstrated further by the inclusion of these impacts within the scope of analysis required under the **National Environmental Policy Act (NEPA)**, 42 **United States Code Sections 4321-4347** and implementing regulations at 40 **Code of Federal Regulations** Part 1500 -1508,

and 23 **Code of Federal Regulations** Part 771 (USDOT) for any project involving a major Federal action. Federal funding of transportation projects, as well as most Federal permits for projects, are considered major Federal actions triggering application of **NEPA** (see 40 **Code of Federal Regulations** Section 1508.18).

It is important to keep in mind that, for most transportation projects, the Department must acquire the necessary property interests and complete relocation activities **before** the project can be put out to bid for construction. This places right of way activities on the critical path for MaineDOT project delivery. As MaineDOT team members handle project budget and schedule issues, they must ensure that the projects will comply with the substantive and procedural requirements of Federal and State law. In addition, they must keep in mind MaineDOT's obligations of equity and good-faith dealing with affected property owners and tenants. Primary responsibility for meeting these mandates lies with the Department team members responsible for the right of way activities.

1-1.03(c) Right of Way Role in Planning

Transportation projects typically originate through planning proceedings within the MaineDOT Bureau of Planning. Other occasional sources of projects include MaineDOT's Office of Freight and Business Services, Bureau of Maintenance & Operations and Office of the Commissioner of Transportation.

Property Office team members act as advisors to the Bureau of Planning for both near-term and long-term transportation planning activities. The Bureau of Planning is responsible for the identification of needed transportation projects across the State. It conducts long range planning that takes a comprehensive look at Statewide transportation needs, goals and objectives. The Bureau of Planning also prepares the project-specific Annual Capital Work Plan which MaineDOT submits to the Maine Legislature for funding. The Property Office helps the Bureau of Planning identify potential major impacts on people and property and advises them on early location and design decisions. The Bureau of Planning often requests right of way studies, including preliminary cost estimates, for particular programs or projects. Property Office team members provide similar services to other entities (e.g., Office of Freight and Business Services), as they plan and execute projects within their areas of expertise.

1-1.03(d) Right of Way Role in Project Development

Most projects move to Project Development for detailed design, project approvals and permits, right of way acquisition, and construction. Property Office team members are a part of the multidisciplinary team that assumes responsibility for each project as it enters the project development phase. Property Office team members work directly with other Project Team Members to identify and understand right of way impacts, as well as to prepare schedules and budgets that incorporate the necessary right of way activities. Those activities include the following:

1. Research to gather information on existing conditions in the area of the proposed project. The type of information obtained includes existing highway layouts, apparent owners' names and addresses, boundaries of adjacent properties property boundary markers and the location of existing improvements on adjacent land (e.g., houses, septic systems, wells). See Chapter 2 for guidance on right of way mapping.
2. Mapping of existing right of way limits and proposed right of way limits, and determining the type and physical extent of property interests needed for the project. This information is included in the preliminary and final design plans. The right of way plans are the information base used for the preparation of acquisition documents including deeds, easements and notices of condemnation. See Chapter 2 for guidance on right of way mapping.
3. Valuation of property interests the Department will acquire for the project. This process determines just compensation for the property, which is required by both State (Maine Constitution Article 1, Section 21, and Title 23 **Maine Revised Statutes** Section 155) and Federal law (see Fifth Amendment to the US Constitution and 49 **Code of Federal Regulations** Part 24). Right of Way personnel use a variety of procedures to value property interests, depending on the nature of the property interests MaineDOT intends to acquire and the complexity of the valuation problem. See Chapters 3 and 4 for process and procedures on valuation.
4. Negotiation to acquire property based on the determined just compensation. Negotiators for the Department are required by law to follow certain procedures relating to the timing and content of offers and other negotiation activities in order to protect property owners interests and rights. See Chapters 3 and 5 for process and procedures on acquisitions.
5. Relocation of property owners and tenants may occur in cases where the impacts of the project require the acquisition of a residence or business location. For example, in negotiation for the purchase of underlying real property, there are specific legal requirements pertaining to notice, determination of compensation and other aspects of the relocation process. The Property Office Relocation Specialist, that works under the direction of the Chief Property Officer, works closely with the affected individuals. For residential relocations, MaineDOT must ensure that the replacement housing is decent, safe and sanitary. For both residential and business relocatees, the goal is to make their move to a new location as financially neutral and trouble-free as is reasonably practical. See Chapter 6 for process and procedures on relocation.
6. Management of property acquired by the Department for transportation projects. Most often, this is a short-term activity that focuses on issues such as asbestos inspection and abatement, and also the demolition of existing structures. In some cases, management of a particular property may extend over a number of years. Where appropriate, Property Office team members may elect to rent property until a

project begins. The Property Manager coordinates with the team members and the Legal Division to handle the sale of excess property. See Chapter 7 for process and procedures on property management.

7. Administrative services required in support of right of way activities. Critical administrative functions include the preparation of notices to property owners, requisitioning of checks for acquisition and relocation payments, and management of records and data relating to right of way activities on projects.

The Property Office also provides technical assistance, oversight, and support to local public agencies (LPAs) (e.g., municipalities that are carrying out project development activities funded by MaineDOT). This is handled through the Multimodal Program (see section 1-1.04(a)). The role of Multimodal's involvement in these cases is to help ensure the LPA understands and complies with the right of way requirements for its project and that it submits the required right of way certification for the project. However, LPAs remain responsible to MaineDOT for compliance with applicable laws and regulations. See Chapter 8 for additional guidance on right of way and local public agencies.

1-1.03(e) Right of Way Role in Maintenance and Operations

Once Project Development completes a project, responsibility for it is transferred to the Maintenance and Operations (M&O) Region in which it is located. The 5 M&O Regions hold broad responsibility for managing and maintaining transportation facilities within their geographic area. M&O maintenance projects on existing facilities occasionally require the acquisition of additional property rights. Those acquisitions must comply with MaineDOT's acquisition criteria. Senior Property Officers in the Highway Program provide M&O with assistance on these tasks on an "as-needed" basis.

1-1.04 Administrative Structure and Operations

1-1.04(a) Overview of Bureau of Project Development

Project Development holds primary responsibility for the design and construction of transportation projects. Its organizational structure is based on programs and project teams. The objective is to provide each MaineDOT program with control of all of the functional skills and resources needed to develop and deliver transportation projects. The programs in Project Development, and the types of projects they handle, include:

1. Highway Program. All highway construction, rehabilitation, and paving projects.
2. Bridge Program (Bridge). All bridge and most other structure projects.
3. Multimodal Program (Multimodal). Rail, air, bike, pedestrian, traffic, marine, and locally administered projects.

These programs report to the Assistant Director of Project Development. The Director of Project Development oversees overall Bureau operations. That position is responsible for Bureau policy, administration and management.

1-1.04(b) Right of Way Role in Project Teams

Project Development's program-based organization, adopted in 2000, emphasizes the placement of technical skills at the project level. Team members assigned to the project teams provide the right of way function. The composition and organizational structure of right of way services in each program are described below.

Highway and Bridge Programs

The Highway and Bridge programs are structured around teams. These teams have permanent members from various disciplines who are responsible for projects within specified geographic areas that are based on MaineDOT's Maintenance Regions. Each team in these 2 programs has functional resources covering Right of Way Negotiations and Appraisal. When the teams need relocation or property management services, they may request them from the Property Office. Property Office members on the teams report to the Project Manager for prioritization of work assignments and for guidance on matters relating to project scope, schedule, budget and project resources. The Property Office provides the Senior Property Officers with technical guidance on right of way matters. The Chief Property Officer is responsible for the technical proficiency of Property Office team members. The Senior Property Officers report to the Program Manager on project and program delivery matters. Highway and Bridge Program Managers hold overall responsibility for the performance of their programs.

A majority of the projects handled by Highway and Bridge Programs are Federally funded. New alignment projects are likely to have the most significant potential impacts. However, reconstruction and widening projects also can cause significant right of way impacts, including relocations. This means that personnel who perform right of way activities for these programs must have a full understanding of applicable State and Federal requirements.

Multimodal Program

Multimodal Program is responsible for projects that primarily involve transportation modes other than highways. The smaller number of projects handled by Multimodal Program, together with the highly-specialized nature of the services Multimodal Program often requires, dictates that the program seek Project Team Members on a case-by-case basis. Multimodal projects often are not Federally funded, but usually do involve Federal permits. Multimodal projects frequently present unusual characteristics, such as cooperative and joint-ownership ventures and the acquisition of heavy industrial sites or infrastructure. This necessitates particularly careful consideration of the right of way, **NEPA**, hazardous waste and other issues in the development of the projects.

While major highway intersection projects are handled by the Highway program, Multimodal is responsible for smaller intersection and signal improvement projects. The projects handled by Multimodal are most always designed by consultant staff and may or may not have right of way needs. In the event right of way is needed, the Project Manager in the Multimodal Program requests assistance from the Senior Property Officer assigned to that Program.

1-1.04(c) Property Office Records and Research Units

R/W Mapping Support and Research is a part of the Property Office. There are two main right of way service areas in this unit. Right of Way Mapping (Mapping) prepares parcel descriptions for MaineDOT condemnation actions, reviews Right of Way plans for conformity and completeness, records completed right of way plans and leads the policy setting for Right of Way mapping standards. Right of Way Research (Research) fields public requests for information about highway boundaries and ownership details relating to completed and pending MaineDOT projects, and requests for historic data on highways around the State. Both of these functions are under the direction of a Professional Land Surveyor that reports to the Chief Surveyor. The Mapping and Research function is described in Chapter 2.

1-1.04(d) Property Office Job Classifications

For Right of Way positions, the Department uses job classifications that encompass right of way and general real estate knowledge, skills and abilities. The specifications are guidelines and are not all-inclusive of the knowledge, skills, and abilities involved in right of way work, or the duties that MaineDOT may assign to an employee in a given classification.

The following job titles are typically used for Property Office team members:

1. Director, Property Office: This position has the overall responsibility for all survey and title functions, property identification, valuation, Just Compensation determination, acquisition, property management and relocation administration.
2. Chief Property Officer: This position is responsible for developing, implementing and maintaining quality control standards and specifications to ensure uniform and consistent performance of Property Office technical staff across all programs and operations.
3. Senior Property Officer (Appraiser III): The Senior Property Officer is well versed in the five major right of way functions, appraisal, appraisal review, negotiations, relocation and property management. SPO's conduct appraisal reviews, and appraisals on complex properties, and provide general right of way guidance to the teams as needed.
4. Property Officer (Appraiser II): Primary responsibilities include the valuation of property, including appraisals and review of appraisals. Also negotiates with property owners and represents the Department in compensation hearings before the State Claims Commission and the Maine Superior Court.

5. Assistant Property Officer (Appraiser I): Primary responsibilities include negotiations with property owners and administrative acquisitions. Also represents the Department in compensation hearings before the State Claims Commission and the Maine Superior Court.
6. Property Manager: Manages, under the direction of the Chief Property Officer, property acquired by MaineDOT for projects, including safety and demolition issues, leasing and the sale of excess property.
7. Relocation Services Specialist: Works with residential and business owners and tenants to relocate them off the project site. This position is responsible for determining relocation benefits and ensuring MaineDOT compliance with notice and other procedural requirements relating to relocation.
8. Transportation Aide, Assistant Technician, Technician, and Senior Technician: Primary responsibilities include gathering property information, preparing Right of Way Plans for MaineDOT projects, maintaining public records pertaining to the highway rights of way, responding to public requests for information about rights of way, property negotiations, administrative acquisitions, utility coordination and management.
9. Chief Surveyor: Establishes and assures compliance with surveying and mapping standards. Reviews and seals existing conditions plans and boundary surveys.

1-1.04(e) Project Development Work Flow and the Team Process

When projects move from the Bureau of Planning to Project Development, the Bureau of Planning forwards informational reports to Bureau of Project Development. These reports serve as the starting point for Project Development's work. The Bureau uses a multidisciplinary Team approach to the project development process. Project Managers head each Team and hold the primary responsibility for performance and project delivery. Technical disciplines represented on the Teams include right of way valuation and acquisition, design, survey, mapping, geotechnical, utilities, construction, environmental and technical support. Team activities include research and data gathering, determination of project scope, engineering design, determination of right of way and environmental impacts, right of way and design plan preparation, right of way relocation and acquisition, public participation and local coordination, utility and railroad coordination, permitting and other project approvals, budget and schedule management, maintenance of project data in the ProjEx Information Management System, and construction.

1-1.04(f) Integration of the Right of Way Function into Project Development Process

One goal of the Project Development Team process is to achieve integration of all necessary disciplines and considerations into the management and decision-making for a project. This is especially critical for right of way functions because of the interdependencies among project scope and design, project budget and schedule, and right of way acquisition and relocation activities. The integration of right of way activities at MaineDOT is accomplished through the use of Project Team Members qualified to handle preliminary and final right of way mapping, negotiations, property valuation and property acquisition documentation. Mapping activities are handled by Right of Way Mapping Team Members, while the remaining right of way activities

are carried out by Property Office Team Members. Relocation and property management services are available to the Teams upon request from Relocation Services Specialist and the Property Manager.

Right of way activities are interwoven throughout the project development process. Major right of way activities, in the approximate order of occurrence on a project, include:

1. Participation in Team meetings and site visits;
2. Preparation of the names and addresses mailing list;
3. Gathering of data for the valuation of affected properties;
4. Completion of Property Owner Reports;
5. Plotting existing right of way on Plans;
6. Participation in a preliminary public meeting, as needed;
7. Review of proposed alignment for highway projects;
8. Preparation of requests for title abstracts on affected properties given significant identified impacts;
9. Preparation of estimates of project acquisition costs;
10. Determination of relocation needs and preparation of a preliminary Relocation Plan and estimates (including sign relocations);
11. Contact of affected property owners and tenants;
12. Review of a preliminary Design Plan;
13. Review of Approach Plans for bridge projects;
14. Review and acceptance of Design Plans Impacts Complete;
15. Preparation of Titles;
16. Preparation of final Right of Way Plans;
17. Valuation of property rights to be acquired for the project including Just Compensation determinations;

18. Negotiation with affected property owners and tenants for project acquisition and relocation;
19. Acquisition of necessary property rights, by voluntary transaction or condemnation through recording of the condemnation or document;
20. Completion of relocations of all displaced persons, which includes items of personal property;
21. Completion of a Right of Way Certificate for the project, specifying that MaineDOT has acquired all property rights necessary for the project in accordance with State and Federal law and regulation, and all displacees have been relocated (the Certificate becomes a part of the Plans, Specifications and Estimates (PS&E) Package that is used for project bidding and construction);
22. Identification and execution of property management activities required pending project construction (e.g., rental, rodent control, asbestos inspection and abatement);
23. Resolution of unsettled claims for acquisition and relocation compensation through negotiation, State Claims Commission proceedings or judicial proceedings;
24. Recording of the Right of Way Plans; and
25. Notification of acquired properties upon construction closeout to the Property Manager.

Later parts of this *Manual* discuss these activities in greater detail.

1-1.04(g) Legal Mandates Affecting Right of Way Activities

Right of way activities, more than any other aspect of project development, **are controlled by State and Federal laws and regulations**. Personnel performing right of way functions must be constantly alert to the content of those laws and regulations, and to the appropriate interpretations of them in the field. Property Office staff and the FHWA Maine Division Right of Way Officer can provide guidance to Property Office team members.

The following Sections of Title 23 *Maine Revised Statutes Annotated (M RSA)* apply to the Property Office:

1. Section 61 – Vacation, Sale or Lease of Acquired Land.
2. Section 62 – Record of locations and changes.
3. Section 63 – Records of Right of Way Division Confidential.
4. Section 73 – Sensible Transportation Policy Act.
5. Sections 151 to 161 – State Claims Commission.

6. Sections 241 to 247 – Relocation Assistance.
7. Sections 301 to 307 – Controlled Access Highways.
8. Sections 651 to 654 – Laying Out, Altering and Discontinuing Highways.
9. Section 2952 – Longtime Buildings and Fences as Bounds – Estoppel.
10. Sections 3021 to 3035 – Acquisition of Property for Highway Purposes (Towns).

The primary Federal laws pertaining to Right of Way are in Title 23 and Title 42 of the **U.S. Code (USC)**. The **USC** is implemented through regulations published in the **Code of Federal Regulations (CFR)**. Right of Way is addressed in 23 **CFR** Part 710. and in 49 **CFR** Part 24.

The hyperlinks to the text of the above **MRSA** and **CFR** references is in Appendices A and B. The content of this *Manual* fully complies with the State and Federal law and regulations. Property Office team members should secure interpretations of the law and regulations from the Chief Property Officer when unique or complex situations are encountered that are not addressed in this *Manual*.

1-1.05 Integration of Right of Way Functions with Functions of Other Organizational Units

1-1.05(a) Legal Services Office

The Legal Services Office plays a major role in the execution of Departmental right of way functions. Successful MaineDOT operations require close cooperation and consultation among Legal Services and Property Office team members.

To facilitate cooperation and consultation, the Title Office is located in the Property Office.

The Title Office performs a range of property title services to identify the owners of property to be acquired for projects. These include a preliminary investigation to secure deed descriptions used by Mapping, “acquisition-to-date” title searches for all properties expected to have either permanent or temporary rights acquired for a project, and a full 40-year title for significant acquisitions (including all full-fee acquisitions). The Title Office delivers to Property Office team members a list of the property owners and other parties of interest to whom MaineDOT must give notice in any condemnation action for a project. The Title Office verifies ownership and parties of interest immediately before a condemnation. The Title Office also does a final title check before it records title transfer documents in the appropriate Registry of Deeds. Once the recording of the condemnation is complete, The Title Office delivers to the Property Office Team Member a notification that MaineDOT has acquired good and sufficient title to the property in question.

Legal Services also performs research on a wide variety of legal issues that arise in the course of a project and that affect right of way work. Typical matters include determining the legal status of a highway layout, the interpretation of property boundaries, the legal status of

structures, property ownership and proper payees for acquired property affected by multiple liens or mortgages.

Legal Services also provides guidance to Appraisers on issues of compensability, interpretation of property interests and ownerships, and interpretation of case law as it relates to the valuation function. With the requirement that each appraisal have a written scope of work, it is important that Legal Services guidance is provided in a format that can be included as part of the valuation documentation.

Legal Services and Property Office team members work together to handle unsettled compensation claims for property that is acquired for projects. Whenever compensation for an acquisition remains unsettled 60 days after the condemnation date, the case is automatically referred to the State Claims Commission, which is an administrative hearing body that offers affected parties a chance for a neutral review of their claim. Once a case is referred to the State Claims Commission, the opportunity for an administrative settlement by the Property Office team members is reduced, and Legal Services assumes responsibility for negotiation and settlement. Close coordination continues between Legal Services and Property Office team members during this process. Property Office team members often serve as witnesses and as informal resources during the proceedings. Legal Services seeks a Property Office review and recommendation on any proposed legal settlement. If a case continues to the Maine Superior Court after completion of State Claims Commission proceedings, Legal Services retains responsibility for the matter. Coordination with the Property Office, and Property Office assistance to Legal Services, continue in a manner similar to that during the State Claims Commission phase.

Non-compensation claims also may arise during the project development process. Property Office team members and Legal Services staff work in close coordination whenever claims appear to present a threat of litigation. The extent of Legal Services involvement is established cooperatively on a case-by-case basis up to the time that a lawsuit actually is filed. Once a court case starts, Legal Services assumes responsibility for managing the case, including creating strategy and conducting negotiations. Throughout the litigation process, Legal Services and Property Office personnel continue to coordinate closely with each other. Legal Services works on these cases primarily with the Property Office Team Member.

In special cases, Legal Services may handle all negotiations and documentation for the acquisition of property. This typically occurs on projects that involve highly controversial acquisitions, projects with unusual schedule requirements or special-purpose projects that require the acquisition of a small number of significant parcels. In these cases, Property Office team members serve as a resource to Legal Services.

Coordination with the Legal Services Office

The right of way function maintains an open line of communication on all levels with the Legal Services Office. Consultation is generally informal. This enables appropriate and timely right of way actions involving legal issues. When a formal opinion is needed, a request will be made in writing to the Chief Counsel through the Chief Property Officer.

The Senior Property Officers work with the Legal Division on the following activities:

1. Title certifications,
2. State Claims Commission activities,
3. Superior Court Appeals on compensation,
4. Closings - acquisition by deed,
5. Legal advice on acquisition compensability questions, and
6. Legal settlements after Superior Court filing.

1-1.05(b) Environmental Office

A mutually supportive relationship exists between the right of way process and environmental activities. The Environmental Office is responsible for determining the human and natural resource impacts of proposed MaineDOT activities and for securing necessary environmental permits and approvals. This creates several interdependencies between the Environmental Office and the Right of Way process. The analysis of human environmental impacts by the Environmental Office includes consideration of right of way impacts, especially the effects of displacement caused by acquisition of homes and businesses. Natural resource impact determinations rely heavily on a consideration of the boundaries of proposed acquisitions, as determined and mapped by Right of Way mappers. Documentation requirements and resulting scheduling requirements vary with the nature and extent of the potential project impacts. Completion of the **NEPA** review and documentation process is a prerequisite for beginning the negotiation phase of right of way acquisition. Delays in either environmental or right of way functions can have an enormous effect on project delivery. Good communication and coordination between the Environmental Office and Property Office personnel from the beginning to the end of a project is critical to its success.

1-1.05(c) Other Multi-Unit Activities

Property Office team members perform a number of other activities that require coordination across unit boundaries. These include the review of private developer's projects involving changes to transportation facilities and the management of access to highways.

Developer project reviews are managed by the MaineDOT Traffic Section. This unit refers developer proposals to Right of Way Mapping for evaluation of the right of way impacts of the proposed design, the accuracy of the right of way layout, the scope of acquisition requirements and the completeness of acquisition documents. Based on its review, Right of Way Mapping makes a recommendation to the Traffic Section. The recommendation may be to approve, approve with conditions or reject the proposal. A more detailed explanation of the developer review process appears in Chapter 2.

Management of access to highways from adjacent properties and roadways is the responsibility of the Traffic Section. Right of Way Mapping and the Property Manager in the Property Office will provide support on right of way issues. Their assistance typically includes property ownership information, right of way layouts, and preparation of acquisition and disposition documents. Property Office team members also provide assistance with valuation and negotiation as needed.

1-2 DECISION-MAKING FOR RIGHT OF WAY ACTIVITIES

1-2.01 Goals and Policies

MaineDOT has a legal and social obligation to ensure that individuals affected by the construction, operation and maintenance of transportation facilities are treated consistently and equitably. Property owners, tenants and business owners are entitled to protections, benefits and advisory assistance, as discussed in detail in Chapters 3 through 6. Applicable due process requirements include notice to a party from whom property will be acquired, payment of just compensation for property rights acquired by MaineDOT, and assistance in locating replacement housing and business sites. The goal for Property Office team members is to find ways to meet MaineDOT project needs while fully complying with property owner protections. Simply put, the mission of the Property Office is to fairly and efficiently identify, acquire, and manage the property rights needed for MaineDOT activities.

1-2.02 Major Decision Points

1-2.02(a) Right of Way Milestones

As the right of way process unfolds, there are a number of major decision points that significantly affect the course of a project. Table 1-2, on the following page, shows major right of way decision points, the decision makers and the related project development process steps.

TABLE 1-2 — RIGHT OF WAY MILESTONES

| Right of Way Milestone | Decision Maker(s) | Related Project Development Process Step |
|--|--|---|
| Approve initial right of way estimate for project (First Phase Right of Way) | Project Manager & Senior Property Officer. | Project Kick-off |
| Set scope of initial property title and valuation work | Senior Property Officer & R/W Mapper. | Preliminary Design Report |
| Complete initial relocation plan and estimate | Relocation Manager & Senior Property Officer. | Preliminary Design Report |
| Approve final right of way programming estimate | Senior Property Officer | Preliminary Design Report and Preliminary Project Plans |
| Approve final relocation plan and estimate | Relocation Specialist & Senior Property Officer. | |
| Identify appraisal process level for affected parcels | Senior Property Officer. | Preliminary Design Report and Preliminary Project Plans |
| Review valuation process decision for required modifications | Senior Property Officer or Chief Property Officer if necessary. | Plan Impacts Complete |
| Coordinate on nature of final acquisitions | Senior Property Manager & R/W Mapper | Final R/W Mapping |
| Notice of Interest to Acquire | Senior Property Officer | Final R/W Mapping Complete |
| Determine "Fair Market Value" | Assigned Property Officer or Review Appraiser | |
| Determination of Just Compensation | Property Office Director or Designee | Fair Market Value Determination |
| Authorize initiation of acquisition negotiations (Second Phase Right of Way) | Senior Property Officer. | NEPA Review Complete (for federally funded projects) |
| Decide to seek administrative settlement in excess of just compensation | Senior Property Officer Team Member up to limits of financial authority, then Legal Services and the Acquisition Review Committee. | Prior to or after Right of Way Certification |
| Determine need for condemnation | Title Manager, Senior Property Officer and Chief Property Officer. | |
| Certify that all necessary property rights for the project have been acquired (Right of Way Certification) | Chief Property Officer, Director Property Office. | Right of Way Certification |
| Refer unsettled property claims to SCC | | Required by law after 60 days Condemnation Unit. |
| Review proposed legal settlements and make recommendations | Chief Property Officer, Senior Property Officer, & Acquisition Review Committee. | |
| Approve final right of way plans | Chief Surveyor or Designee | |

1-2.02(b) Right of Way Certification

As a prerequisite to advertising a federally funded project for physical construction, MaineDOT must certify the relocation and acquisition status of property needed for the project. The Right of Way Certificate, Form AD-3, is used for this purpose. The Certificate is required by 23 **CFR** 635.309(b), (c), (g), and (h). The project Right of Way Certificate is to be completed and submitted by the project Senior Property Officer to the Property Office. The project Right of Way Certificate must be executed by the Chief Property Officer or Director Property Office and copies delivered with the Plans, Specifications & Estimates (PS & E) to the Contracts Unit and Project Manager before the project can be advertised for construction bids.

As a prerequisite to authorizing advertisement for construction, regardless of funding source, the Right of Way Certificate shall reflect a fact situation as indicated in 1, 2, or 3 below:

1. Class 1 Certificate: All necessary rights-of-way, including legal and physical possession and control of access rights, have been acquired. State Claims Commission actions, or Superior Court appeals may be pending, but MaineDOT has obtained title and legal possession to all property. There may be some improvements remaining on the right-of-way, but all occupants have vacated the lands and improvements. The great majority of projects authorized for advertisement by MaineDOT will be in this category. A Class I Certificate may be issued with personal property located within the taking provided the owners of the personal property have received a 90 day notice; and the personalty is addressed in the bid contract; and arrangements have been made for its move/removal. Arrangements can include an agreement for relocation with a private contractor, or by the personalty owner, or removal by the contractor after the expiration of the 30 day notice as outlined in Chapter 6 Section 6-7.06. Note: In the event the project is delayed as a result of issues arising from this process, FHWA will not participate in any additional costs or delay claims.
2. Class 2 Certificate: Although all necessary rights of way have not been fully acquired, MaineDOT has obtained the right to occupy and use all rights-of-way required for the project. Appeal of some parcels may be pending in a Superior Court, or rights of entry may have been obtained on some parcels. The occupants of all lands and improvements have vacated. Under these circumstances MaineDOT will secure FHWA concurrence before advertising a project for construction on Interstate projects. MaineDOT has delegated authority on their use for all other projects. Class 2 Certificates are filed "with exception". In the event the project is delayed as a result of issues arising from this process, FHWA's participation in any additional costs or delay claims will be considered case by case per 23 CFR 635.124.
3. Class 3 Certificate: The acquisition or right of occupancy and use of a few remaining parcels is not complete, but all occupants of residences on such parcels have had replacement housing made available to them in accordance with Chapter 6-1.03 of this *Manual* and 49 **CFR** 24.204 (Availability of Comparable Replacement Dwelling Before Displacement). MaineDOT must receive prior concurrence from FHWA to advertise a project on this basis for Interstate projects. MaineDOT has delegated

authority on their use for all other projects. In the event the project is delayed as a result of issues arising from this process, FHWA's participation in any additional costs or delay claims will be considered case by case per 23 CFR 635.124. Class 3 Certificates are filed "with exception".

4. Advertisement for bids or force-account work may be authorized only if FHWA concurs with MaineDOT in advance that it will be a **significant public benefit.**

For Interstate projects FHWA must also determine the use of this conditional certification is in the public interest. Requests will be made only in very unusual circumstances so that exceptions will not become the rule. The MaineDOT request to FHWA for concurrence will include full explanation of circumstances, and reasons why the advertisement is a significant public benefit. The request to FHWA will identify each occupied parcel, and will include a realistic date when physical occupancy and use is anticipated and a work plan for delivering the parcel by the specified date. A statement shall be included in the request acknowledging that in the event the project is delayed as a result of issues arising from this process, FHWA will not participate in any additional costs or delay claims. Appropriate notification shall be provided in the bid proposals identifying all locations where right of occupancy and use has not been obtained. The physical construction may proceed, but MaineDOT will ensure, by appropriate contract restrictions that occupants of residences, businesses, farms, or non-profit organizations who have not yet moved from the right-of-way are protected against inconvenience, injury or any action coercive in nature.

For Non-Interstate projects, MaineDOT will make a statement that the use of conditional certification is in the public interest. This statement will be placed in the project file with the conditional certification.

A project will not be advertised for construction if the status of right of way is not as described under 1, 2 or 3 above.

For all uses of conditional certifications, MaineDOT will provide an update to FHWA on the status of any outstanding parcel acquisitions prior to issuing a notice to proceed with construction to the contractor.

A statement on the certification is also required that either Relocation is not required as part of the project or all relocations on the project conform to the standards established by Federal regulation.

1-2.02(c) Signatory and Financial Authority

The Department's Administrative Procedures Memorandum No. 10 (APM 10) establishes the authority of MaineDOT staff to sign documents and commit the State of Maine to expenditures. Provisions relevant to the Right of Way process primarily relate to the authority to make binding offers to property owners and tenants, to execute a Right of Way Certificate and to enter into contracts for consultant services. For applicable limits, consult the current Administrative Procedures Memorandum No. 10.

1-2.02(d) FHWA/MaineDOT Oversight Agreement

Under the provisions of Section 1305 of the *Transportation Equity Act for the 21st Century of 1998* (TEA-21), States can assume responsibility for a broad range of **USC** Title 23 functions that were formerly overseen and approved by FHWA. The FHWA/MaineDOT Agreement for the Partnering and Shared Oversight of Federal Aid Projects (April 2015 or current version) defines shared responsibility in Maine. The management of project right of way certifications is identified as a MaineDOT responsibility.

Under the Oversight Agreement, lead project units primarily are responsible for compliance with applicable legal requirements. In the case of certification, Project Development is the responsible party for projects in the Highway, Bridge, and Multimodal Programs. Compliance with the Federal laws and regulations is delegated to Project Managers and Property Officers

The shared oversight pertains only to activities under US Code Title 23. **Right of way activities performed pursuant to other US Code titles remain under Federal approval and oversight.** This includes all real property related activities (US Code Title 49). All **NEPA** approvals also remain with FHWA. The Oversight Agreement does not alter requirements for FHWA approvals on MaineDOT non-project activities. This affects several property management activities including modification in the degree of access control, and disposal of property acquired for Interstate highways.

1-3 QUALITY ASSURANCE/QUALITY CONTROL

MaineDOT strives for quality in all of its products and services. MaineDOT management and project personnel, along with the public as consumers of MaineDOT products and services, share responsibility for quality. Quality control rests with those persons performing services or creating products. It reflects their obligation to perform their jobs well. Quality assurance, on the other hand, is a management oversight responsibility. It is management's duty to monitor, evaluate and modify work performance and processes to ensure that MaineDOT achieves its desired quality goals.

All MaineDOT employees and consultants performing right of way activities are expected to understand the quality assurance standards applicable to their tasks and to strive to meet them. They must work with management to coordinate quality assurance and quality control efforts. Each functional chapter in this *Manual* contains information on the quality assurance expectations for that function. Additionally, there is a separate Quality Assurance/Quality Control Chapter, Chapter Ten that summarizes functional quality assurance standards and describes in detail the quality control responsibilities of right of way management.

1-4 PUBLIC INFORMATION AND PUBLIC INVOLVEMENT

1-4.01 Confidentiality of Right of Way Records relating to Appraisals and Negotiations

The general policy of the State of Maine is that the Government will conduct its proceedings openly and will make its records available for public inspection (1 **MRSA** Section 401). The definition of public records contained in 1 **MRSA** Section 402(3) is quite broad and includes most MaineDOT records. However, the Maine Legislature created a specific and limited exception to the open records law for right of way in 23 **MRSA** Section 63. Under that statute, right of way records and correspondence relating to negotiations and appraisals of property are confidential until the later of the following 2 events:

1. Final settlement of all parcels on the project to which the records and correspondence relate; or
2. Nine months after the completion date of the project according to the records of MaineDOT.

Records for claims appealed to Superior Court remain closed to public inspection until after the award of the court.

1-4.02 Right of Way Role in Public Involvement Activities

Experience has shown that good communication between MaineDOT and the public is the best means for insuring that transportation activities satisfy public needs while avoiding and minimizing unnecessary harm to persons, property and natural resources. MaineDOT's public involvement objective is to achieve 2-way communication. Information should flow from MaineDOT to people who are interested in or affected by a proposed project, to help them understand the transportation needs, the choices for how to address those needs and the project development process that applies. The flow of communication to MaineDOT should include the interests and concerns of property owners and the public, the local conditions relevant to the design and operation of the facility, and the effectiveness of the process in fostering public knowledge and participation. MaineDOT tailors the structure of its public involvement process to the needs of each project and the applicable public involvement requirements under the **Sensible Transportation Policy Act** (23 **MRSA** Section 73(3) (G) and implementing regulations), **NEPA**, and **23 CFR Section 771.111**. In Project Development, design of the public involvement plan for a project is the responsibility of the Project Manager.

As the main link between MaineDOT and property owners and tenants, Property Office team members perform critical communication functions through both formal and informal methods. Formally, Property Office Team members are a part of the public involvement process for MaineDOT projects. Depending on project needs, the Property Office team members or staff may participate in the preliminary public meeting and other public information sessions held in the early stages of a project. At those meetings, Property Office team members explain the existing right of way layout and conditions. Typically, a plan sheet showing existing conditions is available for the meeting. Property Office team members also gather information from

attendees that contributes to the Department's knowledge of the project area. In some cases, Property Office team members may offer a brief summary of the right of way process. Perhaps most importantly, Property Office team members use these occasions to begin informally to build relationships with the local residents with whom they will negotiate as the project moves forward.

A formal public hearing typically occurs after the Project Team approves the preliminary Plans and Preliminary Design Report. For most projects, opportunity for public hearings is the action that meets public notice and comment requirements under the ***Sensible Transportation Policy Act*** and ***NEPA***. A transcript is made of the hearing. Full plans, showing existing and proposed conditions, are posted during the hearing. The formal role of Property Office Staff at the public hearing includes:

1. Explaining the right of way process, including a summary explanation of the rights of property owners and tenants affected by the project; and
2. Discussing the right of way impacts of the proposed project, including any alternatives under consideration.

Informally, the public hearing is another opportunity to gather information for the project and to enhance the channels of communication with local residents and officials.

Beyond these scheduled public involvement sessions, Property Office team members have repeated opportunities during their fieldwork for communication with local residents. Some of those contacts are a part of formal right of way procedures, but many are casual contacts as Property Officers gather information needed for their work. It is important to appreciate the important role these contacts play in developing the relationships that will dictate the course of negotiations with affected property owners.

1-5 ACQUISITION, RELOCATION AND CONDEMNATION PAYMENTS

1-5.01 Payment Process

All claims for payment of property acquisition and relocation costs are processed through the Property Office, Title, and Condemnation Unit. Checks for property acquisition are delivered by certified mail, with return receipt requested.

Certain relocation payments are hand delivered by the project right of way staff person. Hand delivery is the preferred method for relocation replacement housing payments, as MaineDOT must assure that the claim amount is applied to the purchase cost of replacement housing. Checks for relatively minor amounts, such as for residential moving costs, may be sent to the claimant by certified mail.

Property owners should be personally advised that the check for property acquisition will include the names of all parties that have an interest in the property as shown on the title report. This will include co owners, and lien holders, including mortgagees. It is the property owner's responsibility to clear liens and secure lien holder signatures on the State check. Additional cost to owners, such as paying a lien release fee to the mortgage holder to sign a check, are also reimbursable.

Lost or missing checks may be replaced. The project staff member who is advised of a missing check should report this to the Condemnation Unit. The owner or other claimant will be required to sign an affidavit attesting that a check is lost or missing. A replacement check will be issued after checking with the State Treasury to assure that the check has not been paid, and to cancel payment on the missing check.

1-6 RECORDS MANAGEMENT

Each program maintains right of way records within the program project files. The Program Directors are responsible for the organization, security and storage of files. Operational personnel who create and use file documents are expected to exercise discretion and care as reflected in the following guidelines:

1. Place original documents only (not multiple or duplicate copies) in the project file.
2. Minimize removal of original documents from MaineDOT offices. Use photocopies or written notes if information from documents is needed for reference outside the office.
3. Record personal or financial information only if it is relevant to the program purpose for which a record is kept.
4. Make sure that official forms are completed and blank spaces are lined out before finalizing forms and other official documents.
5. Consult the Chief Property Officer or Senior Property Officer before releasing information from MaineDOT files to any person. MaineDOT right of way documents contain personal and financial information that is protected from public disclosure.

Title 1 **MRSA** Sections 402 and 408-A control disclosure of State records for public inspection. Disclosure of right of way records is further controlled by 23 **MRSA** 63. Right of way staff that originate or control official records, including appraisals, negotiation diaries, property owner reports, cost estimates and relocation benefit determinations, should be familiar with these statutes.

