

Compulsory Acquisition

The 5 Step Process

Federal, State and local governmental authorities (“acquiring authority”) sometimes acquire land and interests attached to such land for public purposes.

Interests include ownership, leases and rights of way.

Those affected include land owners, tenants, business owners, licence holders and mortgagees - You might be one.

This process is known as Compulsory Acquisition of Land and can often represent a very difficult time for those affected.

Important information you need to know

- The process under which your interest in land is compulsorily acquired is predominantly governed by the Land Acquisition and Compensation Act (Vic) 1986. Various court decisions have significantly affected how this Act is interpreted and compensation claims determined.
- Unless exceptional circumstances arise the acquiring authority generally does have the right to compulsory acquire your land and interest.
- As an owner of an interest in land which is compulsorily acquired you are entitled to receive compensation. You may also be entitled to claim against the acquiring authority for any loss or damage you may have suffered as a result of the acquiring authority not proceeding with the acquisition.
- The acquiring authority must follow stringent rules regarding the timing, method and form of documentation when compulsory acquiring an interest in land from you.

5 Step Procedure followed

Step 1 - Notice of Intention to Acquire

The acquiring authority must serve upon you a Notice of Intention to acquire your interest. Such notice needs to be in a prescribed written form and contain information and details which includes the purpose for which your interest will be acquired, the reasons why the land is thought to be suitable for that purpose and the approximate date upon which the authority proposes to take possession of the land. At this stage all the authority is doing is notifying you that it intends to proceed with the compulsory acquisition, but it does not legally bind the authority to do so. If the acquiring authority does not proceed with the compulsory acquisition within 6 months of such notice being served upon you then such notice lapses.

Immediately upon the acquiring authority serving you with a formal Notice of Intention to Acquire your interest in land (“Notice of Intention”) you are not permitted to sell, enter into a new lease or otherwise deal with your interest in the land without the written consent of the acquiring authority.

Step 2 - Notice of Acquisition and Offer

The compulsory acquisition of your interest in land takes place on the date the acquiring authority publishes such acquisition in the Government Gazette. Within 14 days after such publication the acquiring authority must make you an offer in writing containing the amount of compensation the acquiring authority offers to pay you together with a copy of a certificate of valuation upon which the acquiring authority has relied on in making such offer to you.

Step 3 - Acceptance or further claim

You are entitled to either accept such offer or otherwise reject it and make a written claim against the acquiring authority. Such claim needs to be in a prescribed form and include the amount of compensation you seek and a copy of a certificate of valuation upon which you rely in making your claim.

Often you can claim an advance of compensation at this step being the amount offered by the acquiring authority. However, this amount is only on account of a final compensation amount: if the final compensation amount is less, you will have to repay the excess but if the final compensation is more, you will receive the balance.

Step 4 - Acceptance of Further Claim or further negotiation

Upon the acquiring authority receiving a claim from you, it has 3 months to either accept such claim or reject it. If the acquiring authority rejects your claim then a conference is usually held in the presence of all parties and experts (including valuers) to try to resolve differences.

Often this step involves much negotiation and more than one meeting to attempt to reach a position acceptable to all parties.

Step 5 - Tribunal or Court proceedings

If you still cannot agree to the compensation amount, then the matter is deemed to be in dispute and any party may initiate proceedings to have the dispute determined either in VCAT or in the Supreme Court of Victoria.