

TITLE 5
LANDS DIVISION

U. S. ATTORNEYS MANUAL 1953

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The functions of the Department assigned to the Lands Division (set out in Title I under Lands Division) place under the supervision of the Division, all matters pertaining to: acquisition of land by the Government; protection and conservation of the public domain, all other lands and real property of the United States; national parks; historic sites; national forests; Indian property and Indian affairs, except crimes against the United States; reclamation; and irrigation and water rights. These assignments are handled by six Sections, namely, Trial, Land Acquisition, Appraisal, Appellate, Legislation and General, and Administrative.

GENERAL TRIAL MATTERS

All pending or contemplated cases, matters, and proceedings in the trial courts, except condemnation proceedings, are handled by the Trial Section.

INSTITUTION OF ACTIONS

In the absence of specific authorization to the contrary from the Assistant Attorney General, all actions handled by the Lands Division shall be instituted in the United States district court in the name of the United States.

AUTHORIZATION FROM THE ASSISTANT ATTORNEY GENERAL PRIOR TO INSTITUTION OF ACTIONS

Litigation may not be instituted without specific authority from the Assistant Attorney General (in an emergency, authority may be requested by telegraph or telephone), except in those matters set out hereafter in which the United States Attorneys are authorized to act on the direct request of certain agencies.

DEFENSE OF SUITS AGAINST OFFICERS OR AGENTS OF THE UNITED STATES

The Department should be informed at once of the pendency of any action against a Federal official or employee for acts done or to be done in the performances of his official duties. The United States Attorney may appear and represent the officer or employee at the latter's request or at the request of his superior but when time permits, no appearance should be made until instructions from the Department are obtained. If necessary, the request for instructions should be by telephone or telegraph. An action against a Fed-

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eral officer or employee brought in a State court may be removed to the Federal court. 28 U. S. C. 1442. The United States Attorney will be instructed immediately as to whether an action in a State court should be removed to the Federal court and, before receiving these instructions, he should take no steps in the State court which would prevent removal.

SUBMISSION OF PLEADINGS FOR CONSIDERATION IN THE DEPARTMENT

Except in matters where the United States Attorney is authorized to act on the direct request of agency involved, two copies of the complaint must be submitted for the consideration of the Department prior to the institution of any action, and two copies of all other papers filed by any party or by the court, including pleadings, orders, proposed findings, judgments, opinions or other instruments of record, briefs, memoranda, and offers in compromise must be promptly forwarded to the Department. (One copy is for inspection and filing in the Department. The other is for transmission to the interested department or agency.) Where circumstances permit, copies of any of the foregoing instruments which are to be filed on behalf of the Government should be submitted to the Department before filing the originals.

LIS PENDENS

Whenever required by the nature of the case, a notice of the pendency of the action or *lis pendens* shall be filed or recorded among the proper local records, except in those jurisdictions where the law is settled that the commencement of the action is notice to all persons affected.

STIPULATIONS

In no case shall the United States Attorney or field Attorney enter into an agreed statement of facts or a stipulation to abide the result in another case or any stipulation concluding the substantive rights of the United States without specific authority from the Assistant Attorney General in charge of the Lands Division.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In all actions in the Federal courts, tried upon the merits without a jury, care should be exercised that proper findings of fact and conclusions of law are entered by the court as provided by Rule 52 (a), Fed. Rules Civ. Proc.

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While the Rule provides requests for findings are not necessary for review, such requests should be filed whenever appropriate or advantageous and when possible two copies should be transmitted to the Department for approval before filing.

Proper objection should be made to requests for findings of opposing parties. When necessary a motion should be made not later than 10 days after the entry of judgment to amend the findings adopted by the court or to make additional findings in accordance with Rule 52 (b).

RECORDING JUDGMENT

Whenever a judgment affecting the title to real property is recovered by the United States, the necessary recordation should be made promptly.

PERFECTING LIEN OF JUDGMENT

Whenever a judgment for money is recovered by the United States the necessary action shall be taken in accordance with the provisions of local law to perfect and preserve the lien of the judgment upon all property of the judgment debtor in the district in which the judgment has been entered or in any other district where the property of the defendant may be found. See 28 U. S. C., 1962 and 1963, and also *Rhea v. Smith*, 274 U. S. 434.

COMPROMISES

No claim or case may be compromised without specific authority from the Attorney General, except in certain cases referred directly to the United States Attorney by the agency involved, discussed later in this Title.

When a compromise is offered, the United States Attorney or field attorney shall require the offerer to reduce the proposal to writing and to submit with it a cashier's or certified check, bank draft or money order for the amount offered, drawn or endorsed unconditionally to the order of the Treasurer of the United States. Where a large sum is involved a token deposit is acceptable. The United States Attorney or field attorney then shall forward by registered mail to the Department the written offer; the check, bank draft or money order; his recommendation and the reasons therefor; and a statement of the debtor's financial status.

The recommendation should be guided by the principles that compromise offers cannot be accepted unless (a) there is doubt as to whether judgment can be secured for an amount larger than that offered in

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compromise, (b) if a judgment has been or can be secured there is doubt as to whether an amount larger than that offered can be collected, or (c) the probable cost of collection exceeds the difference between the amount offered and the amount recoverable.

The financial statement need not be forwarded where the offer is recommended for acceptance solely because there is doubt as to whether judgment can be secured for an amount larger than that offered or because the probable cost of collection exceeds the difference between the amount offered and the amount recoverable.

PAYMENT OF CLAIM OR JUDGMENT

Except when required by the circumstances of a particular case, no property other than money should be accepted in full or part payment of a claim, compromise or judgment and in no event shall property other than money be accepted until all incurred court costs are paid. However, when property other than money is accepted as payment it should be delivered to the local representative of the interested agency, a receipt taken, and the fact of its acceptance and its estimated value reported to the Department.

EXECUTION TO ENFORCE COLLECTION OF JUDGMENT

Whenever necessary to enforce collection of a money judgment, the United States Attorney or the field attorney should ascertain such facts as the facilities of his office will permit to determine whether the judgment debtor has property subject to execution and whenever necessary should invoke the aid of the field officer of the agency at whose instance the action originally was instituted. If property subject to execution is found, execution should be issued and a levy made. If no property subject to execution is found, execution should not be issued unless required by local law to perfect or protect the judgment lien or its priority, or unless the United States Attorney has reason to believe the issuance of execution will induce voluntary payment. If no distrainable property is found, the Department should be informed of the results of the investigation and the case should be held in abeyance awaiting instructions.

COSTS

In no case may payment of costs be waived. Whenever money is accepted as full or partial payment, or in compromise it must be applied first to court costs.

TITLE 5: LANDS DIVISION**DIRECT REFERENCE CASES****Trespasses, Damages, and Delinquent Charges**

United States Attorneys are authorized to act in matters not involving new or unusual questions or questions of title on behalf of any agency under the jurisdiction of the Department of Agriculture, the Department of the Navy, the Department of the Interior, the Housing and Home Finance Agency and the General Services Administration at the direct request in writing of the authorized field officers of those agencies and without the prior consent of the Attorney General in the following cases:

(a) To enjoin trespasses on lands, buildings, or projects under the control of any of the above agencies, including restricted Indian land;

(b) To recover damages of not less than \$25 nor more than \$1,000 for trespasses on lands, buildings or projects under the control of any of the agencies, including restricted Indian land.

(c) To collect delinquent rentals or delinquent operation and maintenance charges accruing on Indian irrigation projects and federal reclamation projects of not less than \$25 nor more than \$1,000 or to evict tenants, squatters, trespassers, or others from lands, buildings, or projects under the control of any of the above agencies, including restricted Indian land; *Provided:* That United States Attorneys shall take no action unless it appears from the written request of the agency that a copy of that request has been forwarded to the Department of Justice in Washington.

Institution of Actions for Money Only

No action for the recovery of money only shall be instituted unless the referring agency supplies satisfactory proof that a judgment if recovered would be collectible.

Actions Are to be in United States District Court; Exceptions

All actions shall be instituted in the Federal court in the name of the United States except:

(a) Where the Federal court is not in session so that possession cannot be summarily obtained, suit may be instituted in the State Court.

(b) Actions for recovery of possession of any property developed or constructed under the Lanham Act shall be filed in the appro-

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appropriate State court in the name of the United States and the Administrator of the Housing and Home Finance Agency. Act of January 21, 1942 (56 Stat. 11), amending Section 2 of the Lanham Act (54 Stat. 1125), 42 U. S. C. 1522.

Form of Actions for Recovery of Possession

The prime purpose of actions to evict tenants, squatters, trespassers or others, where no question of title is involved, is summarily to dispossess the occupants. To accomplish that end a form of action should be pursued in the United States district courts which will result in a speedy recovery of possession. The most expeditious procedure should be used. For example, the complaint demanding possession may be filed together with a motion for an order directing the defendant to show cause why possession should not be surrendered. The order may be returnable within the comparable period allowed under the State law governing summary eviction.

Collection of Claims for Money Only Without Institution of Suit

Whenever possible, claims for money only should be collected without the institution of suit. Where the debtor is out of possession, the United States Attorney shall make no demand for payment nor write collection letters on any claim of less than \$25 unless the referring agency furnishes a statement showing that the debtor is employed or that his financial status otherwise warrants such action.

Correspondence

Contemporaneous with the transmittal of correspondence from one of the agencies to a United States Attorney one copy of the communication shall be forwarded by the referring officer to the Attorney General, Lands Division, Trial Section, Washington 25, D. C.

Contemporaneous with the transmittal of correspondence from a United States Attorney to any of the agencies one copy of the communication shall be forwarded to the Attorney General, Lands Division, Trial Section, Washington 25, D. C.

Transmittal of Pleadings and Other Papers

One copy of each pleading and paper filed by any party or by the court shall be promptly forwarded to the Department and two copies shall be forwarded to the local officer of the referring agency (the local officer forwards one copy to his agency in Washington, D. C.).

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Compromises of Direct Request Matters

Matters handled by the United States Attorney or field attorney at the direct request of local field officers may be compromised without the prior approval of the Attorney General, provided: (1) the gross amount of the Government's claim including interest is \$500 or less, (2) the United States Attorney and the authorized local officer of the interested agency both approve the settlement in writing, and (3) one of the conditions exist upon which a recommendation in other compromises would be based. (See Compromises, this Title.) Where the United States Attorney and the local officer cannot agree, the offer should be submitted to the Department of Justice as in compromise cases generally.

Procedure for Handling Eviction Matters in Certain Housing Projects

Pursuant to an agreement with the Public Housing Administration, the managers of federally owned and operated housing projects have authority to institute actions against tenants in the local State courts to recover possession and, in those States which permit collection of rent as a part of eviction proceedings, to recover delinquent rentals. If the cases are contested, the housing managers will notify the United States Attorneys by letter and the Department by copy of that letter, of the pendency of each case. Upon notification of the pendency of a contested case, the United States Attorney will handle all further proceedings in the case and inform the Department of the action taken in the same manner as in other types of direct reference cases.

In several jurisdictions where local procedure requires that the forms necessary to institute an action be signed by an attorney, the practice has been adopted of having the housing manager submit the necessary forms to the United States Attorney for signature. The papers are then returned to the housing manager for filing. In most instances the cases are uncontested and no further action is required of the United States Attorney. This practice may be continued. However, if this procedure is not practicable, requests for eviction will continue to be referred by the housing managers to the United States Attorneys under the procedure for handling direct reference cases generally. In this connection, the responsibility for determining when eviction proceedings should be brought rests primarily with the housing managers. The Public Housing Administration has issued instructions to the various housing managers on the handling of hardship cases, which are consistent with the policy heretofore followed

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by the Department. Accordingly, the United States Attorneys are authorized to proceed in all cases referred to them by the housing managers without prior approval from the Department.

ACQUISITION OF LAND BY CONDEMNATION**CONDEMNATION PROCEDURE**

Rule 71A, Fed. Rules Civ. Proc., governs the procedure to be followed in all cases for the condemnation of real and personal property under power of eminent domain. All condemnation cases must be prosecuted in strict conformity with this Rule. Rule 71A provides that the general Federal Rules of Civil Procedure shall be applicable to all cases, except as otherwise provided in Rule 71A. There must be, therefore, strict conformity with the general Rules, subject to the exception noted. Rule 71A prescribes the form and content of the complaint, the form, content and method of service of notice to defendants, and the form and content of the answer or appearance of defendants. Forms complying with the Rules and approved by the Department are included herein in the Appendix.

The complaint in condemnation must not vary in form or substance from any instruction given by the Department and if there is any variance, the Department must be advised at once of such changes and the reasons therefor. The Department must be advised of the date of institution of cases.

Service of the notice of condemnation must be made in accordance with Rule 4 (c) and (2) of the Rules. A copy of the complaint need not be served with the notice of condemnation. Personal service of the notice must be made under Rule 71A (d) (3) upon any defendant whose residence is known who resides within the United States or its territories or insular possessions. The United States Marshal for the district in which the defendants reside should be requested to make personal service upon defendants living outside the territorial limits of the court in which the case is pending. A sufficient number of copies of the notice should be furnished the Marshal for service upon defendants, for the return of service pursuant to Rule 4 (g), for the Marshal's files and for use by Government counsel in charge of the case.

The same form of notice is used for service by publication as for personal service. However, to avoid unnecessary expense, the notice should contain only the *shortest* adequate legal description sufficient for the identification of the property and the names of all defendants served personally should be eliminated from the published notice. The

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use of lengthy descriptions, particularly by metes and bounds, should be avoided so that costs of publication may be minimized.

DISMISSAL OR ABANDONMENT

Condemnation cases must not be dismissed as to any of the land included in the instructions to condemn, nor may there be any change as to the interest or estate to be acquired, unless expressly authorized by the Department. Orders of dismissal must be entered without prejudice and without costs. The procedure for dismissal is set forth in Rule 71A (i), Fed. Rules Civ. Proc. Instructions for the termination of cases instituted to acquire the temporary use of property are hereinafter set forth.

LIS PENDENS

Upon the filing of a complaint in condemnation, a notice of the pendency of the case or *lis pendens* must be recorded among the local land records, except in those States where it is the settled law that the institution of the case or filing of the complaint serves the purpose of a *lis pendens* and constitutes notice of the case.

PROCUREMENT OF EVIDENCE OF TITLE

Rule 71A (c) provides that there shall be named as defendants in condemnation cases all persons having or claiming an interest in the property condemned whose names can be ascertained by a reasonably diligent search of the local land records, considering the character and value of the property involved and the interest or estate to be acquired. This requires that evidence of title shall be obtained and examined for a determination of the necessary and proper parties defendant. The Regulations for the Preparation of Title Evidence in Land Acquisitions by the United States, set forth in this Title must be followed in the procurement of evidence of title. Instructions with respect to the solicitation of bids and the award of contracts for evidence of title are set out in Title 8 under Contract Service and Forms.

The evidence of title must be continued to a date subsequent to (1) the time of filing of the complaint in condemnation, if no *lis pendens* is filed of record; or (2) the time of recordation of the *lis pendens* pursuant to instructions above. Based upon the information, if any, disclosed by the continuation of the evidence of title, any additional parties shown by the continuation to have, or who may claim to have, any interest in the property involved must be joined

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as defendants in the case and any changes in the naming of necessary and proper parties defendant must be effected. The procedure for adding, dropping, or substituting parties is by motion and order under Rules 21, and 71A (g) and (i) (3). An amended complaint need not be filed.

CERTIFICATES AS TO PARTIES IN POSSESSION AND MECHANICS' LIENS

In order to insure the joinder as defendants in the condemnation case of all parties who have, or who may claim to have, any right or interest in the property involved, whether or not such right or interest is disclosed by the evidence of title, the United States Attorney or field attorney should obtain a certificate showing (a) whether any party is in actual or constructive possession of all or any part of the land whose rights, if any, are not a matter of record, and (b) whether within the period provided by local law there has been any work or labor performed upon the property or any material furnished in connection with any work upon the property which would entitle anyone to a lien. Generally, the necessary certificate of inspection may be obtained from the local representative of the acquiring agency or the custodian for the Government of the property. The certificate should conform substantially with that set out in the Appendix (form 3). All or any number of the tracts or parcels of land in a particular case may be included in one certificate of inspection, if more convenient than using a separate certificate for each tract.

All parties disclosed by the certificate as to possession and mechanics' liens to have an interest in the property involved must be joined as defendants in the case.

ORDERS OF POSSESSION

United States Attorneys and field attorneys must comply promptly with instructions from the Department requiring the entry of an order for the surrender of possession of property to the Government. See form of order for possession (Appendix, form 10). Notice of the entry of the order and of the date provided therein for the surrender of possession are controlled by Rules 5 and 77 (d), Fed. Rules Civ. Proc. Service of a copy of the order should be made personally, whenever possible, upon the defendants and parties in possession of the land in accordance with Rule 5 (b) or service should be made in the manner and within the time directed by the court in the order. The case must then be prosecuted to a speedy conclusion in order to

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keep to a minimum any interest which the Government may be required to pay on the award of just compensation.

If the party in possession refuses to surrender possession as provided in the order, application should be made in accordance with Rule 70, Fed. Rules Civ. Proc., for a writ of assistance to put the Government in possession. Application for a citation in contempt under Rule 70 should not be made without the prior approval of the Department.

DECLARATION OF TAKING PROCEDURE

United States Attorneys and field attorneys must comply promptly with instruction from the Department for the filing of a declaration of taking and the deposit of estimated just compensation pursuant to the Declaration of Taking Act (40 U. S. C. 258a-f). Duplicate originals of a dated receipt of the clerk of the court for the amount deposited as estimated just compensation should be obtained and transmitted to the Department (Appendix, form 1). A judgment on the declaration of taking is not required unless specifically requested by the Department. The judgment, if obtained, should contain a finding by the court of the filing of the declaration of taking and the deposit of estimated compensation, the dates thereof, and an adjudication that title to the exact extent of the estate or interest described in the declaration is vested in the United States. The judgment should also contain an order for the surrender of possession. Unnecessary recitations should be omitted from the judgment in accordance with Rule 54 (a), Fed. Rules Civ. Proc. Service of copies of the judgment upon defendants is controlled by Rules 5 and 77 (d), id. The case must be prosecuted to a speedy conclusion in order to minimize the amount of interest which the Government must pay on the amount of the ultimate award in excess of the deposit.

Under the Declaration of Taking Act and Rules 71A (c) (2) and (j) the court may order that the moneys deposited as estimated compensation, or any part thereof, shall be paid forthwith to the rightful claimant. The purpose of the Declaration of Taking Act is first, to give to the Government title to and possession of the land and to relieve the Government of the burden of interest accruing on the amount of the deposit, and second, and of equal importance, to make funds available for immediate distribution to the former owner in the discretion of the court.

In furtherance of this purpose and in accordance with Rule 71A (j), United States Attorneys and field attorneys are required actively to

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assist landowners and the court, as *amicus curiae*, in effecting prompt distribution of funds deposited pursuant to the Declaration of Taking Act. Further instructions with respect to distribution will be found under Disbursement of Funds in Court. No formal objection to the distribution by the court of all or any part of the deposit should be made without prior approval of the Department.

Immediately upon the filing of a declaration of taking and the deposit of estimated compensation, the landowner and other parties interested should be notified by letter, by the United States Attorney or field attorney, of the deposit and the amount thereof, that immediate distribution of the funds deposited may be made without prejudice to the right of the landowner to claim a larger amount, and that Government counsel will render assistance in effecting advance distribution. A form of letter with which there should be substantial conformance is included (Appendix, form 4).

EXCLUSION OF PROPERTY ACQUIRED BY DECLARATION OF TAKING

The Attorney General is authorized in any condemnation case to stipulate in behalf of the United States to exclude any property or any part thereof or interest therein that may have been taken by the United States by declaration of taking (40 U. S. C. 258f). The necessity for the exclusion of property acquired by declaration of taking generally occurs in two classes of cases:

- (a) Cases in which through inadvertence or otherwise title has been taken to property, or some portions thereof or estate or interest therein not desired by the acquiring agency or found subsequently not to be needed for public use;
- (b) Cases in which the landowner desires to remove buildings, trees and shrubs, crops, or fixtures attached to the realty which are not needed or desired by the Government.

The authority of United States Attorneys and field attorneys to enter into stipulations is governed by the nature of the property to be excluded but in the event of any question, specific instructions should be obtained from the Department.

United States Attorneys and field attorneys must obtain the prior authorization of the Department for the exclusion of property mentioned above in subparagraph (a). United States Attorneys and field attorneys are authorized to enter into stipulations for the exclusion of property of the type mentioned in subparagraph (b) without securing the approval of the Department provided that the exclusion has been approved by the local representative of the acquiring agency.

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However, if the property of the latter class is of high value, the specific approval of the Department should be obtained.

In all cases in which a stipulation is entered into for the exclusion of property, the stipulation must contain either a provision fixing the amount by which the just compensation, whether already determined or to be determined, shall be reduced by reason of the exclusion, or a provision to the effect that no claim of whatever nature for just compensation will be asserted in the case or otherwise for the property excluded. If, in the opinion of the acquiring agency, the property to be excluded is of no value or the exclusion will result in a saving to the Government by the avoidance of demolition or removal costs, the provisions of this paragraph shall not apply.

A stipulation relating to the class of property mentioned in subparagraph (b) should also contain a provision limiting the time for removal by the owner of the property and providing that if the owner fails to remove the property within the prescribed time, the stipulation shall be of no force and effect.

OPTIONS AND CONTRACTS OF SALE

When the land involved in a condemnation case is the subject of a valid accepted option or contract of sale, executed both by the presumptive owners and by a duly authorized representative of the acquiring agency *prior* to the institution of the condemnation case, the accepted option or contract is binding upon the signatories thereto in the condemnation case. The accepted option or contract should be pleaded in the complaint in condemnation. The United States Attorney or field representative is authorized without the prior approval of the Attorney General to have a judgment entered in the amount of the accepted option or contract provided that (a) the local representative of the acquiring agency has advised in writing that the land has not decreased in value due to any action of the owners since the date of the option or contract and (b) all special and unusual conditions and requirements of the option or contract, if any, have been performed. It is also necessary that a determination shall have been made that the optionors in the accepted option or the vendors in the contract of sale are the sole and only parties entitled to the just compensation, other than taxing authorities, lienors and encumbrancers whose claims may be satisfied from the award.

The procedure for summary judgments under Rule 56, Fed. Rules Civ. Proc., should be utilized in obtaining the entry of consent judgments on options and contracts of sale, but only after the expiration of the time for filing of answers or appearance by defendants.

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OFFERS IN COMPROMISE

Every offer of compromise in a condemnation case which the United States Attorney or field attorney considers may be recommended for acceptance must be submitted to the Department for consideration and acceptance or rejection. The United States Attorney or field attorney shall submit with the offer in compromise his recommendation; the range of the Government's proposed testimony of value in event of trial; the probable range of testimony on behalf of the landowner insofar as known; all available appraisal reports, unless previously furnished to and reviewed in the Department; and a statement of all other factors pertinent to a determination of the advisability of accepting or rejecting the proposed settlement. Whenever feasible, the Department should be advised of the recommendation of the local representative of the acquiring agency with respect to the proposed settlement.

In Department of the Army acquisitions, the District Engineers have authority to approve settlements not in excess of the fair market value of the land involved as determined by Department of the Army appraisers. Therefore, in submitting offers in compromise in cases for the condemnation of land at the request of the Department of the Army, the United States Attorney or field attorney should obtain and transmit to the Department the recommendation of the District Engineer for acceptance or rejection of the offer.

In Bureau of Reclamation, Department of the Interior, acquisitions, the Chief and Regional Counsel of the Bureau have authority to approve all offers in compromise. Therefore, in submitting offers in compromise in cases for the condemnation of land for the Bureau of Reclamation, the United States Attorney or field attorney should obtain and transmit to the Department the recommendation of the Regional Counsel of the Bureau of Reclamation for acceptance or rejection of the offer.

TRIALS

Rule 71A (h) provides that any party to a condemnation case may have a trial by a jury on the issue of just compensation by filing a demand therefor unless the court in its discretion orders that, because of the character, location or quantity of the properties to be condemned, or for other reasons in the interest of justice, the issue of just compensation should be determined by a commission of three persons appointed by the court. The Rule further provides that trial of all issues shall otherwise be by the court.

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There are as yet no authoritative decisions on the question of the power of the court to appoint a commission other than as a substitute for a jury and after a demand for a jury trial has been filed. Accordingly, in order to preserve the right to a trial by a jury or a commission, a demand for a jury trial should be filed in all cases. Under Rule 38 (b) a demand for a jury trial may be indorsed upon a pleading. The demand for a trial by jury should be indorsed upon the complaint in condemnation and notice of the demand should be included in the notice of condemnation (Appendix, form 6).

If it is subsequently determined that the use of a commission is advisable, a motion should be made for the appointment of the commission. The motion should set forth the facts justifying the use of the commission. The order of court appointing the commission should include a finding of fact by the court as to the necessity for use of the commission.

MOTIONS FOR NEW TRIALS AND OBJECTIONS TO COMMISSION'S AWARDS

If the amount of a jury verdict or the award of a commission appointed by the court under Rule 71A (h) exceeds the valuations testified to by Government witnesses or the amount of the purchase price in an accepted option or contract of sale, the Department must be furnished promptly with a full report of the trial or hearing with specific recommendations for future action, and pending the receipt of instructions from the Department, either a motion for a new trial must be filed in accordance with Rule 59, Fed. Rules Civ. Proc., or written objections to the Commission's award must be filed in accordance with Rule 52 (e) (2) id.

JUDGMENTS

The United States Attorney or field attorney should take care that judgments in condemnation cases include an adjudication of all issues within the jurisdiction of the court. Separate judgments on the several issues in the case should be avoided whenever possible, thus, for example, an order of distribution should be included in a judgment determining compensation. Judgments should not contain recitals of pleadings, reports of commissions, or the record of prior proceedings. Judgments determining compensation should contain:

- (a) A finding and adjudication of the right of the United States to condemn the property involved for public use;
- (b) An adjudication that title to the exact estate or interest condemned is vested in the United States, if the declaration of taking

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procedure has been used, or, if not, an adjudication that title to the exact estate or interest will vest in the United States upon payment of the just compensation into the registry of the court;

(c) Confirmation of the stipulation between the Government and the landowners fixing the amount of just compensation or confirmation of the verdict of the jury or the award of a commission appointed by the court to determine compensation;

(d) An accurate legal description of the property, which may be by reference to the complaint or declaration of taking;

(e) Whenever possible, a finding and adjudication of the right of the defendants to distribution of the just compensation;

(f) Provision for the payment of interest, if any, for which the Government may be legally liable;

(g) Provision for any refund of moneys deposited into the registry of the court to which the Government may be entitled;

(h) An adjudication of any other issue not previously ruled upon formally by the court.

DISBURSEMENT OF FUNDS IN COURT

United States Attorneys and field attorneys are required actively to assist landowners and the court, as *amici curiae*, in effecting prompt distribution of funds deposited into the registry of the court as just compensation. Rule 71A (j) which relates to distribution provides that the court and attorneys shall expedite the proceedings for distribution and for the ascertainment and payment of just compensation in cases in which a deposit is made. Government counsel should obtain promptly and furnish to the court all information available as to the state of the title to the property and any liens, taxes, and encumbrances thereon. Government counsel should also assist landowners in the preparation of motions for, and orders of, distribution and affidavits for execution by the claimants in support of motions for distribution. Care should be taken to see that a proper order is entered for the payment of all taxes and assessments due and exigible at the time of vesting of title in the United States. Government counsel should not delay distribution of just compensation for any extended period for the procurement of curative material for the elimination of defects of title but should rely upon the condemnation procedure for that purpose.

No case may be considered closed UNTIL:

- (1) All funds have been *ordered* disbursed,
- (2) The termination of all pending matters, such as motions for new trial, appeals, etc., and in "use" cases,
- (3) The final term has expired, and

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(4) The question of restoration damages has been adjudicated or otherwise disposed of.

When funds cannot be disbursed because the owner cannot be located, or for other reasons, an order should be sought (as promptly as the court will entertain such orders) for the refund of the undistributed balance to the Treasury of the United States pursuant to 28 U. S. C. 2042. A certified and an uncertified copy of the order should be transmitted to the Department, together with a check payable to the Treasurer of the United States or two copies of the certificate of deposit showing the deposit in a federal depository.

PROGRESS OF CASES

The Department must be informed promptly by letter of all major steps taken in each case, such as the completion of personal service of notice and of publication of notice, the dates of all trials and hearings and the results thereof; the filing by any defendant of a notice of appeal or a motion for a new trial. *It is essential that there shall be strict observance of the foregoing rule.*

CORRESPONDENCE WITH DEPARTMENT

All letters to the Department with regard to condemnation cases shall contain, either in a heading or in the first paragraph, the current Departmental file number, the title and docket number of the case, and the names of the acquiring agency and the project. A carbon copy should be included with the original letter.

TRANSMITTAL OF PAPERS TO THE DEPARTMENT

There shall be transmitted to the Department immediately upon the filing thereof one copy of all papers of whatever nature filed in the case. The date of filing should be noted on the copy transmitted to the Department. There need not be transmitted to the Department copies of any papers included in transcripts of the record furnished the Department in accordance with the following section.

TRANSCRIPTS OF RECORD

The United States Attorney or field attorney shall transmit to the Department at the hereinafter designated stages of the case successive partial transcripts which will be combined in the Department at the conclusion of the case into a complete transcript of record. No further or additional transcript is required and no documents included in one transcript need be duplicated in any subsequent transcript.

TITLE 5: LANDS DIVISION**Initial Transcript**

Upon the institution of the case there shall be transmitted to the Department an initial transcript consisting of:

- (a) One certified and one uncertified copy of the complaint;
- (b) One certified and one uncertified copy of the notice of condemnation;
- (c) If a declaration of taking is filed, duplicate originals of the dated receipt of the clerk of the court for the moneys deposited as estimated compensation;
- (d) If a judgment is entered upon a declaration of taking or if an order of possession is obtained, one certified and one uncertified copy of the judgment or order;
- (e) One certified and one uncertified copy of any other paper filed in connection with the institution of the case.

Intermediate Transcript

Upon the entry of any judgment determining just compensation (whether for one or more tracts in the case) there shall be transmitted to the Department an intermediate transcript consisting of:

- (a) One certified and three uncertified copies of the judgment;
- (b) One certified copy of all papers of whatever nature filed in the case to and including the date of entry of the judgment (but excluding copies of papers included in transcripts previously transmitted to the Department and excluding orders of distribution);
- (c) Evidence of the recordation of any *lis pendens* recorded among the local land records;
- (d) The evidence of title, properly continued as hereinabove provided;
- (e) The certificate of Government counsel as to the regularity of the case substantially in accordance with that set out in the Appendix (form 2);
- (f) The certificate as to parties in possession and mechanics' liens.

Final Transcripts

Upon the entry of a final judgment (whether for one or more tracts in the case) there shall be transmitted to the Department a final transcript consisting of:

- (a) One certified and one uncertified copy of the final judgment;
- (b) Duplicate originals of the dated receipt of the clerk of the court for any moneys deposited pursuant to a judgment determining compensation;
- (c) The evidence of title, properly continued as hereinabove provided, unless needed for use in effecting distribution of just compensation.

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sation, in which event the evidence of title should be transmitted to the Department upon the completion of distribution;

(d) Evidence of the disposition other than in the case of any outstanding compensable interests disclosed by the evidence of title.

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT

The Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1178), as amended, is in full force and effect and is applicable to condemnation cases. The United States Attorney or field attorney must investigate to determine whether any defendant who has not answered or filed an appearance is in military service with the Armed Forces or is in the Public Health Service on duty with the Armed Forces. If an investigation locally is not productive of the necessary information, the Department should be furnished with a list of the full names and last-known addresses of the defendants who are in default of answer or appearance, so that any available information may be obtained from the military forces. The United States Attorney or field attorney must comply strictly with the provisions of the Act (50 U. S. C. App. 520) by filing necessary affidavits and moving for the appointment of an attorney *ad litem*, when required.

TERMINATION OF TEMPORARY USE CASES

Upon receipt of instructions from the Department, or in Public Housing Administration cases, upon receipt of notice from the Regional Counsel of that agency, that the temporary use of property is no longer necessary, the United States Attorney or field attorney should file promptly a motion for the limitation of the term condemned to the date of termination of the temporary use and the surrender of possession of the property by the Government. Service of the motion and notice should be made in accordance with Rule 5 (b), Fed. Rules Civ. Proc. Proper arrangements should be made promptly for a determination of the extent, if any, of the monetary liability of the Government for payment of just compensation by reason of any physical changes of the property resulting solely from the Government's use. Generally, there should be obtained an estimate of the cost of physical restoration, with proper allowance for salvage, and an appraisal reflecting the diminution or enhancement in the fair market value of the property as of the date of termination of the temporary use resulting directly and exclusively from physical changes made by the Government.

The case should be set for trial at the earliest practicable date for the adjudication of all claims of the defendants for restoration.

TITLE 5: LANDS DIVISION**INCREASED JUST COMPENSATION FOR TEMPORARY
USE OF LANDS FOR HOUSING PROJECTS**

The Administrator of the Public Housing Administration is required under certain circumstances to increase the amounts of future payments for the temporary use of sites for housing projects (42 U. S. C. 1585 (b)). All inquiries with respect to or applications for increases in payment of compensation under the statute should be referred to the Public Housing Administration, Washington 25, D. C., which will handle all claims therefor. There is included a form of stipulation approved by the Department (Appendix, form 13). Upon the receipt of such a stipulation executed by the proper defendants and approved by the Public Housing Administration, the United States Attorney or field attorney should sign and file it and obtain the entry of a judgment for the increased payments provided in the stipulation. Two copies, one certified, of the stipulation and judgment must be transmitted to the Department and one copy of the judgment must be transmitted to the Public Housing Administration.

REIMBURSEMENT OF OWNERS AND TENANTS IN ACQUISITIONS FOR THE DEPARTMENTS OF ARMY, NAVY AND AIR FORCE FOR EXPENSES AND DAMAGES INCURRED IN MOVING

The Secretaries of the Army, Navy, and Air Force have been authorized [Act of Congress approved September 28, 1951, Sec. 501 (b) (65 Stat. 336, 364), and the Act of Congress approved July 14, 1952, Sec. 401 (b) (66 Stat. 306, 624-625)], under certain circumstances and to the extent determined by each of them to be fair and reasonable under regulations approved by the Secretary of Defense, to reimburse the owners and tenants of lands acquired for any public works project for expenses and other losses and damages incurred by such owners and tenants in the process and as a direct result of the moving of themselves and their families and possessions because of the acquisition of lands by the Government. The total of the reimbursement to the owners and tenants of any parcel of land cannot exceed 25 percent of the fair market value of the land and no reimbursement may be made unless an application therefor is submitted to the acquiring agency within the time prescribed by the authorizing Acts. The authority conferred upon the Secretaries of the Army and Air Force has been delegated by them to the Chief of Engineers, Department of the Army. The authority conferred upon the Secretary of the

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Navy has been delegated to the Chief of the Bureau of Yards and Docks, Navy Department.

The authorizing statutes are permissive and not mandatory. Since the authorized reimbursements are discretionary with the head of the interested agency all inquiries by owners or tenants with respect to such reimbursements should be referred to the local representatives of the acquiring agency.

The authorizing statutes expressly provide that reimbursement of owners and tenants shall be in addition to, but not in duplication of, any payments for the acquisition of land that may otherwise be authorized by law. The authorizing statutes do not change existing substantive law applicable in condemnation cases. No change in existing practices and procedures in handling condemnation cases and particularly in negotiating for settlements in condemnation cases are required by the authorizing statutes. However, United States Attorneys and field attorneys should take care to insure that no duplication of payment is made to owners and tenants. United States Attorneys and field attorneys should advise the local representatives of the acquiring agency of any case in which an owner or tenant asserts a claim for expense and other loss and damage alleged to have been incurred by such owner or tenant as a result of the moving of themselves, their families and possessions because of the acquisition of the land. This requirement for notice to representatives of the acquiring agency is particularly applicable in cases for the condemnation of the temporary use of property wherein claims may be asserted for moving costs under the rule established in *General Motors Company v. United States* (323 U. S. 373).

Representatives of the Corps of Engineers, Department of the Army, and of the Bureau of Yards and Docks, Department of the Navy, have been instructed to coordinate their activities under the authorizing statutes with representatives of the Department of Justice to insure that no duplication of payment will result and to advise representatives of the Department of Justice of reimbursements made under the authorizing acts to owners and tenants prior to the determination of just compensation whether by settlement or trial.

ACQUISITION OF LAND BY DIRECT PURCHASE

In discussing the administrative direct purchase procedures of the Land Acquisition Section, it is recognized that in many instances because of varying State laws relating to real property, United States Attorneys and field representatives will encounter unique and diffi-

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cult problems in the examination of titles, preparation of opinions, and consummation of acquisitions.

It is impossible to formulate regulations in anticipation of these unusual questions, since the development of the problem may depend upon countless circumstances including the acceptability of title evidence not strictly in accordance with Department regulations; the legal sufficiency of judicial proceedings affecting the title to the land to be acquired; the authority of public and private corporations to acquire and dispose of real property; the legal effect of exceptions, reservations and restrictive covenants in the chain of title; the possible lien of encumbrances, taxes and assessments, including outstanding bond issues of drainage districts, school districts, and irrigation districts.

Specific instructions and assistance in the solution of difficult and complex problems should be requested of the Department whenever the United States Attorney or the field representative is convinced that a matter of policy or prolonged legal research is involved or a deviation from standard procedures will effect a substantial saving in time and expense.

The procedure followed by the Land Acquisition Section in approving the validity of a title to lands to be acquired by direct purchase is to perform all or part of the following: (a) procure or prepare and approve the abstract or other title evidence; (b) thoroughly examine the title and prepare a preliminary title opinion indicating the objections to, and the requirements for clearing the title; (c) procure or direct the procurement of curative material necessary for the elimination of title defects; (d) actually close the purchase when the acquiring Governmental department or agency does not maintain disbursing officers, or when it requests that assistance which involves the elimination of encumbrances and other objections to the title, the preparation of deeds, releases, and other title documents, the delivery of the purchase price, and the supervision of any other matter incident to completing the purchase; and finally, (e) prepare a final opinion for the approval of the Attorney General to the effect that a valid title is vested in the United States.

STANDARD PROCEDURE GOVERNING ACQUISITIONS BY PURCHASE AND DONATION

Procurement of Title Evidence and Preparation of Title Opinions

Generally.—Upon receipt by the United States Attorney or the field attorney of a letter from the Department enclosing a letter of re-

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quest from the acquiring agency with a photostatic copy of the vendor's site proposal and the acceptance thereof, and other available data, he should immediately acknowledge receipt of the papers and request the vendor to furnish title evidence in the form and substance required by the Department (see Regulations for the Preparation of Title Evidence in this Title) and a plat or plan of the survey of the area under investigation. If the vendor does not furnish a plat or survey, the attorney should secure one from the acquiring agency and have it formally approved by the vendor as representing correctly the dimensions of the area under investigation.

Cooperation with acquiring agency.—The United States Attorney or the field attorney, when requested by a representative of the acquiring agency, should assist in procuring all title data and instruments necessary to perfect title.

Removal of objections.—He should require the removal of all objections to the title other than those to be eliminated by the payment of money in the closing of the acquisition.

Submission of title papers.—When the United States Attorney or the field attorney has obtained the abstract, certificate of title, and all other title papers and available data and has examined the title carefully, he should prepare, or obtain a draft of the proposed deed and transmit it to the Department with the title papers and his preliminary opinion (Appendix, form #1) which must contain:

(a) A statement of the contemplated use of the land and the name of the acquiring agency;

(b) The acreage, parcel or tract number, location of the land, the amount of the purchase price, the date of the option and the names of its signers;

(c) The correct legal description of the land or reference thereto;

(d) The number of volumes, pages or items of abstracts, date of certificate, name of the abstracter, a statement that the abstract thereto or the certificate of title is satisfactory in form;

(e) The name of the person or persons in whom the title is vested;

(f) Any objections to title including those which consist only of matters that can be removed by the payment of money (such as taxes, mortgages, judgments, or other liens) or by the recordation of any release, quitclaim, deed, or other document which has been examined and approved and will be delivered upon payment of a sum certain;

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- (g) Any reservations, restrictions or conditions in the option requiring special mention; and
- (h) Information on matters of practice, and quotation from or citation to any statute or decision considered in point on any unusual or controversial questions involved in the title.

Curative material.—Upon receipt by the United States Attorney or the field attorney of a letter from the Department requesting curative data or material and enclosing a copy of the option or contract and abstract and other title data, the attorney should immediately acknowledge receipt of the letter, and

- (a) Secure the additional or curative data requested from the local representative, if any, of the acquiring agency, and cooperate with him in securing such material, or in the absence of any representative obtain the data from other available sources, and
- (b) Examine the title, prepare an opinion and forward it with the title papers to the Department at Washington.

Closing of Transactions

The details of the closing of acquisitions necessarily differ according to the number of vendors and interested title claimants, the number and variety of the encumbrances and title objections to be disposed of, and miscellaneous other details which the immediate exigencies of the case may disclose. Upon receipt of the check and title papers the United States Attorney or the field attorney should:

- (a) Acknowledge the receipt of all title papers, including check and voucher, by number, symbol number and amount—referring to each tract by number, acreage, and location.
- (b) Review the file relating to the acquisition in order to acquaint himself with the terms and conditions of the sale and to determine whether there are any special conditions to be performed on the part of the vendor and vendee or any objections to the title to be eliminated by agreement or otherwise before title may vest.
- (c) Obtain all necessary curative data and determine the character and amount of the outstanding claims lawfully chargeable against the land.
- (d) Immediately notify all parties interested of the date and place the transaction will be closed.
- (e) Require the abstractor or title company to satisfy him (by an examination of the records covering the period since the date of his last certificate shown in the abstract, or the date of the certificate of title) that no adverse change in the title has occurred.

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(f) If a change in ownership has occurred during the progress of acquisitions, the attorney should:

(1) Require a continuation of the title evidence to establish the change of ownership.

(2) Reexamine the continued title evidence.

(3) Prepare a supplemental opinion on title.

(4) Transmit the supplemental opinion and all title papers, and the original check to the Department of Justice at Washington with the request that a new check be issued in the name of the new owner.

(g) If no adverse change in the status of the title has occurred, he will proceed as follows:

(1) Prepare a closing statement (Appendix, form 07) covering in detail all charges to be eliminated by payment of money to be deducted from the purchase money check, including all taxes and assessments constituting liens against the property, regardless of whether the amount of taxes and assessments have been determined; outstanding judgments, both State and Federal; mortgages, or deeds of trust; amounts reserved under any bond for title affecting the acquired land; and all liens, statutory or otherwise.

(2) Personally make an inspection of the premises to ascertain whether any persons are holding in whole or in part adversely to the United States or its vendor, and whether there are any adverse encroachments on the site; see that any such encroachments are removed unless waived in writing by the acquiring agency, and prepare a certificate of possession in the form (Appendix, form 26) furnished by the Department (see Regulations for the Preparation of Title Evidence, this Title); if any persons are found in possession, secure disclaimers in the form furnished by the Department (Appendix, form 28).

(3) Prepare and have the vendor execute the deed unless this has already been done (see Regulations for Preparation of Title Evidence).

(4) Obtain a release of all liens and encumbrances and see that all taxes and assessments are paid.

(5) In the acquisition of public building sites, secure a bond in the approved form executed by the vendor and by a surety company or two financially responsible individuals guaranteeing the clearance of the site within the time specified in the contract

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of sale, unless the Government is entitled to all improvements on the site under the terms of the purchase contract.

(6) In acquisitions of public building sites, secure from the clerk of the court a certificate setting forth the results of a search of the Federal court records of the division of the district where the land is located for possible bankruptcies of vendors and owners in the chain of title for 15 years prior to the date of the certificate.

(h) When the title is satisfactory in all respects, close the transaction, as follows:

(1) Accept and record the deed and record all instruments releasing liens or encumbrances on the property. (Unless otherwise provided in the option, recording fees and documentary revenue stamps are paid by the vendors.)

(2) Obtain the continuation of the title evidence bearing the date of closing or a subsequent date or a final certificate of title similarly dated and showing that valid title has vested in the United States of America.

(3) Satisfy out of the purchase price by certified or cashiers' checks all outstanding charges or encumbrances on the land, or withhold a sufficient amount in such checks from the purchase price to satisfy and discharge them.

(4) Deliver the purchase money check or the balance of the purchase price in a cashier's or certified check to the vendor and receive vendor's receipt for the purchase money or Standard Form No. 1034 (Title 8, Appendix, form 24).

Procedure After Closing and Vesting of Title in the United States

Review the continued title evidence and all related papers.

Prepare a final opinion addressed to the Attorney General in the approved form (Appendix, form 51).

Transmit to the Department of Justice in Washington the final opinion and all related papers, including the certificate of possession, the vendor's receipt for the purchase money, itemized statement of disbursements signed by the vendor, vendor's surety bond, if any, guaranteeing clearance of the site, and executed and recorded deeds to the United States. If time required for recordation delays return of the recorded deed, transmit a copy of the deed, to be followed subsequently by the original when its recordation is completed.

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Advise the Department promptly of any difficulties encountered which delay the closing of a transaction.

If for any reason the purchase money check is held by the United States Attorney or the field attorney for more than 30 days, a special report should be made in each case giving the reason for nondelivery.

If for any reason a transaction may not be closed, the United States Attorney or the field attorney will return the title evidence and all related papers, together with the purchase money check, to the Department of Justice in Washington, explaining fully the reasons for their return and recommending further action.

SPECIAL PROCEDURES

Procedure Governing Acquisitions by the Department of Agriculture for Rural Rehabilitation Projects and by the Department of the Interior for the Bureau of Biological Survey and the National Park Service

(1) Title examination and preliminary opinion.

The United States Attorney or the field attorney will follow the procedure outlined in these instructions, where applicable, in examination of preliminary title papers received from the field representatives of the acquiring agency, and prepare and transmit to the latter a memorandum opinion, addressed to the acquiring agency, specifying all title data and instruments that must be procured by the field representative of the acquiring agency to perfect title. He will also:

Procure waivers through the field representatives of the acquiring agency (on standard form) of easements, or other rights reserved in the option, or disclosed by the examination of the title, which will not interfere with the use of the land. Waivers are unnecessary if easements or rights are noted in the accepted option.

Request the office of the field representative to obtain any continuation of the abstract or correction thereof found to be necessary for the examination of the title.

When the requirements shown in the memorandum opinion have been complied with and the title evidence and related papers returned, the United States Attorney or the field attorney will prepare a preliminary opinion addressed to the Attorney General as set forth in these instructions.

The preliminary opinion should then be transmitted to the Department in Washington with the option to purchase; abstract, certificate

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of title; plat or survey, properly certified; waivers by acquiring agency as to easements, or other matters; and all other related title data.

In acquisitions for these agencies the United States Attorney or the field attorney will forward one carbon copy of his preliminary opinion to the field representative of the acquiring agency and another to the head of the acquiring agency.

(2) *Closing of transactions:*

(a) Upon receipt of the purchase money check, title evidence, related papers, and copy of the preliminary opinion from the Department of Justice at Washington, the United States Attorney or the field attorney will follow the procedure outlined above for the closing of transactions, where applicable.

In addition he will inform the field representative that he will proceed with the closing at the earliest possible date, and that he desires immediate information as to the amounts of any possible loans or advance made to the vendor by the acquiring agency which should be deducted from the amount of the check.

Any deductions for advances made must be transmitted to the local United States Marshal when the transaction has been closed, for deposit until proper disbursement may be made, and an appropriate receipt therefor obtained.

Procedure Governing Acquisitions by the Department of the Army for Military and Civil Purposes in Localities Where That Department Has No Local Closing Attorney

(3) *Title examination and memorandum opinion:*

(a) The United States Attorney and all field attorneys assigned to land acquisition matters of the Corps of Engineers should cooperate with the District Engineer in charge.

(b) Upon receipt of the request of the District Engineer, the United States Attorney or the field attorney of the Department of Justice examines title evidence submitted to him and returns it to the District Engineer with his memorandum opinion as to the state of the title.

(c) The District Engineer then transmits all title papers with the opinion of the United States Attorney or the field attorney to the office of the Chief of Engineers, Washington, D. C., who, if he desires an opinion of the Attorney General, recommends that it be requested and arranges for the transmittal of the request with title papers to the Department of Justice.

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(4) Closing of transactions.

The opinion of the Attorney General is furnished to the Secretary of the Army enumerating the objections to the title. The title papers are then transmitted by the Chief of Engineers to the District Engineer, who complies with the requirements of the Attorney General's opinion by obtaining whatever curative material may be necessary, and submits the title papers to the United States Attorney or the field attorney of the Department of Justice, or, if a special attorney of this Department is available, the Chief of Engineers transmits the title papers and purchase money check to the designated special attorney for closing the purchase and submits to this Department a copy of the letter transmitting these papers. Upon receipt of the papers the attorney closes the purchase after complying with instructions outlined above concerning the closing of transactions, and returns the final title assembly to this Department with his title opinion (Appendix, form 51).

Procedure for the United States Attorneys and Field Attorneys to Follow in Handling Checks Drawn on the Treasury of the United States in Settlement of Lands Being Acquired by the United States

United States Attorneys and field attorneys should maintain at their own expense a safe depository for checks in their possession, and, if necessary to insure safekeeping, rent safe-deposit boxes in which to keep the checks until they are delivered to the vendor.

When it is necessary in making settlement to pay taxes, judgments, mortgages, and other liens out of the proceeds of the check, the attorney handling the settlement should:

(a) Make the settlement at a bank or title company in the presence of the vendor where the check can be endorsed and separate checks drawn, certified, and issued for the liens, the remainder delivered to the vendor in a certified or cashier's check, and proper receipts obtained. Attorneys should not obtain the endorsement of the vendor on the check until the actual closing.

(b) When it is impossible for the vendor to be present in person at a bank or title company when settlement is made, he may designate someone with power of attorney to endorse the check and to act for him.

(c) Avoid the deposit of funds and under no circumstances should the funds be mingled with the funds of the United States Attorney or the field attorney. If funds must be withheld for a period of 60 days or less, a certified or cashier's check, payable to the local

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United States Marshal, should be obtained and deposited with the Marshal for appropriate disbursement.

(d) When it is necessary to withhold a part of the funds to pay taxes or other encumbrances which cannot be paid within 60 days, obtain a certified check drawn payable to the "Treasurer of the United States" and forward such check to this Department for deposit.

(e) Upon the disbursement of funds withheld to pay taxes or other liens, obtain a receipt of payment which must be forwarded to the Department of Justice.

Where a portion of the funds represented by the Treasury check have been disbursed and it is then discovered that closing and final disbursement cannot be effected, obtain a certified check from the vendor for the full amount payable to "_____, Special Attorney" or "United States Attorney _____, District of _____" as a means of safeguarding the funds pending the actual settlement.

Prepare, sign and forward to the Department with the final opinion the vendor's receipt or Standard Form No. 1034 (Title 8, Appendix, form 24) an itemized statement or closing statement (Appendix, form 67) signed by all vendors, disclosing the disbursement of the Treasury check, all payments actually made, the names and addresses of the persons to whom made and any sums withheld for the later payment of taxes or other encumbrances which could not be paid at the actual date of closing.

Checks must be returned to Washington:

(a) When, because of fire loss or other unusual circumstances involving a substantial amount, a reduction is necessary in the amount of consideration to be paid. Related papers must also be returned with checks for resubmission to and approval by the General Accounting Office.

(b) When, subsequent to the issuance of the Treasury check, a proponent has died or someone else has succeeded to his interest and the acquisition is to be completed with a new vendor or vendors, the abstract and related papers, proof of descent, devise or other evidence of the succession to the title by the new vendor or vendors must be returned with checks for preparation of a supplemental opinion.

(c) In case of the death of the original vendor subsequent to delivery of the deed to the Government but before cashing the Treasury check, with proof of the vendor's death and letters of adminis-

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tration or other evidence establishing the title of the representatives or successors of the deceased vendor.

(d) When the closing of an acquisition has been so delayed that the date of the issuance of the check is prior to July 1st of the preceding fiscal year, the check should not be delivered but should be returned to this Department for return to the General Accounting Office for cancellation and issuance of a new check.

(e) In the event the United States Attorney or Special Attorney is unable for any reason to complete a proposed transaction, the Treasury check, abstract, and related papers should be returned.

When a reduction in a purchase price is necessary because of variance in acreage, or other cause, involving small amounts, and arrangements have been made and permission of the Department obtained by the United States Attorney or the field attorney to deduct the proper sum from the consideration to be paid a proponent a certified check for the amount of the reduction, payable to the Treasurer of the United States, should accompany the abstract, related papers and final opinion when submitted to Washington.

REGULATIONS FOR THE PREPARATION OF TITLE EVIDENCE IN LAND ACQUISITIONS BY THE UNITED STATES

The following regulations have been prepared for the guidance of Government departments and agencies, vendors to the United States, attorneys of the Department of Justice, and others having occasion to prepare or procure evidence of title including related papers in all cases of the acquisition of land by the United States wherein the title opinion of the Attorney General may be requested. These regulations supersede all previous rules on the subject. Their observance is required unless exception is made in unusual circumstances.

RESPONSIBILITY FOR PROCURING EVIDENCE OF TITLE

In direct purchase cases it is considered to be the duty of the heads of the acquiring agencies to furnish necessary evidence of title to land to be acquired by direct purchase, exchange, or donation, the expense of procuring the same to be paid out of the appropriations made for the respective departments (40 U. S. C. 255), unless by contract or by statute (40 U. S. C. 256) vendors are required to furnish such evidence.

In condemnation proceedings, generally, the necessary evidence of title is made available to the Department by the acquiring agency. In some few cases, the landowner may be obligated by contract to fur-

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nish the necessary evidence of title, in which event the landowner should be required to comply fully and promptly with the terms of his contract.

Whenever it is the responsibility of the Government to procure the title evidence, bids should be solicited immediately from competent abstracters and title companies for the furnishing of evidence of title conforming to the requirements of the Department. The bids should include, as a separate item, the cost of any necessary continuation of the evidence of title.

EVIDENCE OF TITLE ACCEPTABLE TO PRUDENT ATTORNEYS AND TITLE EXAMINERS IN THE LOCALITY IN WHICH THE LAND IS SITUATED WILL ORDINARILY BE ACCEPTABLE TO THE DEPARTMENT

One of the following types of evidence should be obtained after considering the costs of the several types in the interest of conserving funds:

(a) Abstracts of title prepared in accordance with the requirements of these instructions, by acceptable abstracters, or by qualified and competent abstracters employed by a department or agency of the Government.

(b) Certificate of title (Appendix, form 24) prepared in accordance with the requirements set forth below concerning form and contents of certificates of title, by acceptable title corporations in jurisdictions where corporations may legally issue such certificates.

(c) Owners' duplicate certificates of title issued pursuant to satisfactory State systems of title registration similar to the Torrens system.

(d) Copies of public title records duly authenticated by their official custodian or certified by an acceptable abstracter.

(e) Title insurance policies (Appendix, Form 29) prepared, in accordance with the requirements set forth in these regulations, by acceptable insurance corporations.

(f) Any other satisfactory evidence of title.

QUALIFICATIONS OF ABSTRACTERS AND TITLE COMPANIES

Individual abstracters must be attorneys at law or professional or official abstracters qualified and authorized by law to prepare and certify to abstracts; have no interest in the land to be acquired; and not be related to the vendors.

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Title companies must be qualified and authorized by law to furnish abstracts, certificates of title, or title insurance policies in the State where the land lies; and have either their home office or a well-established branch office located in the State where the land lies. In addition, there must be submitted for consideration and approval information as to experience and training; organization and title plant; system of examining and abstracting title; financial responsibility (if title corporation); and reputation in the community.

FORM AND CONTENTS OF ABSTRACTS

In some sections of the country, and in many of the large cities, abstracts are prepared by an incorporated title company or by a professional or official abstracter, not necessarily an attorney. In other sections of the country the abstracts are prepared by an attorney who also obtains curative data and frequently supplements the abstract with a history of the title and his opinion as to its sufficiency. The following requirements are, therefore, subject to modification to adapt them to the type of abstract commonly in use in the locality where the land is situated:

(a) *Form and arrangement.*—The abstract should be printed or typewritten (or consist of photostatic copies of original documents), and the description of the land covered by the abstract should appear on a caption page. Where the descriptions in abstracted items are the same as those contained in the captions, or in preceding instruments, the descriptions should not be recopied, but the abstracters should indicate that the same lands are involved. The various entries should be numbered and appear in the chronological sequence of recording. Affidavits and other papers submitted by the abstracter with the abstract should be numbered or lettered and referred to by such number or letter in the item of the abstract to which they relate.

(b) *Contents, in general.*—The abstract should contain a sufficient summary of the material portions of every recorded instrument, affecting the title to the land described in the caption, to enable the examiner to determine the nature and effect of such instruments. No attempt is made to specify all items which must be shown in the abstract, but the following, which are sometimes omitted, must be shown exactly as they appear in the records: The marital status of all grantors and grantees; the consideration and receipt thereof; the dates of execution, witnesses, where necessary, acknowledgment, and recordation of each instrument; and the due

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date of any unsatisfied mortgages or deeds of trust, the amount of the indebtedness secured thereby; and any reservations, limitations or conditions. Releases of homestead, dower, and other statutory rights should be affirmatively shown. Where titles to separate parcels are derived from a common preceding chain of title, a master abstract should be prepared and supplemented by individual abstracts.

Period of Search

For the purposes of this paragraph, "title instrument" means any recorded instrument purporting to evidence the transfer of a fee simple title (other than as security for debt), including direct deeds of conveyance, deeds by trustees, referees, guardians, executors, administrators, masters, or sheriffs, wills or decrees of descent, and also decrees, judgments or orders of courts of competent jurisdiction purporting to quiet, confirm, or establish title in fee simple. The "period of search," referred to in each of the numbered subparagraphs hereinafter set out, means the number of years of continuous coverage by an abstract of the record beginning with a title instrument recorded at least the required minimum number of years prior to the date of the abstracter's certificate. Regardless of the applicable period of search, all abstracts must contain or be accompanied by proof that the title was originally divested from the sovereign by patent or grant of the land involved. Any mineral or other reservations to the sovereign shall be specifically noted. All instruments antedating the applicable period of search which are disclosed by instruments recorded within the period of search and which contain reservations, exceptions, restrictions, limitations, or other rights or interests or impose conditions or liens possibly outstanding or affecting the title, must be shown. Subject to all the foregoing provisions of this paragraph, the periods of search shall be as follows:

(1) A minimum of 60 years as to all acquisitions (including easements) except those mentioned in the following subparagraphs (2), (3) and (4).

(2) A minimum of 80 years as to all tracts to be acquired for considerations in excess of \$50,000.00 and as to Federal Building Sites.

(3) A minimum of 40 years as to "low value lands." "Low value lands" are defined as those lands as to which:

(a) The average value of the land or interests to be acquired under a single option or contract of sale does not exceed \$10 per acre;

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(b) The total value of the land or interests to be acquired under a single option or contract of sale does not exceed \$3,500; and

(c) No money in excess of \$2,500 is to be expended for the construction of buildings, works, or other improvements (except roads, trails, and fire protection improvements) on the land or interest to be acquired.

(4) A minimum of 25 years as to the acquisition of easements, as follows: For telephone and telegraph lines, electric transmission lines, channel excavation, relocation of utilities such as fire alarm systems, water mains and pipes, pipelines, railroad spurs for temporary use in transporting materials for construction purposes, access and other roads, highways, spoil disposal, intermittent flowage (where the estimated frequency of flooding is not oftener than 5 years), borrow pits, and other uses of the general character and type of those herein specified. Abstracts relating to acquisitions of all other easements must be prepared in accordance with the applicable preceding subparagraphs in the same manner as abstracts relating to fee simple titles.

Records Lost or Destroyed

Where title records, for the full periods of search required above, have been lost or destroyed, or are otherwise permanently unavailable, the abstract should begin with the first available record and be supplemented by the following:

(1) A certificate of the abstracter as to the fact of the loss or destruction of the records, that no reservations, limitations, encumbrances, or defects in the title are known to the abstracter, and that the beginning point of the abstract is accepted by competent attorneys in the community, and either;

(a) Proof of compliance with requirements of statutory proceedings, in any, to establish titles affected by the loss or destruction of the records; or

(b) Secondary documentary evidence, complying with statutory requirements, which, if offered in a judicial proceeding, would be admissible as evidence of title, and evidence of title by adverse possession as provided in the instructions set out below under Adverse Possession.

TITLE 5: LANDS DIVISION**Wills and Probate Proceedings**

Wills should be reproduced in full. Essential portions of probate proceedings disclosing all material facts of record must be shown, including, for example, the petition, names and ages, and the incompetency, if any, of parties in interest as shown by the record; proof of service of citations; date of approval of bond; issuance of letters testamentary; publication of notices or other action necessary to start the running of any statutes of limitations; ancillary probate of the will in the jurisdiction where the land lies, if the original probate was elsewhere; guardianship proceedings of any parties who are incompetent; and whether estate and inheritance taxes have been paid or releases thereof obtained.

When title has been or is to be conveyed by executor's or trustee's deed, the court orders or other authority of the fiduciary and sufficient of the proceedings to demonstrate their regularity must be shown.

If the title has been or is to be conveyed by the devisees, the abstract should show whether all specific legacies, debts, and taxes have been paid, and where necessary whether there has been final distribution of the estate, discharge of the executor, and closing of the estate.

Title by Descent

In every instance where title has passed by descent, the abstract should show whether there has been administration on the estate, and in case of administration, the abstract should show sufficient of the record of the proceeding to determine whether necessary jurisdictional facts existed and statutory requirements essential to the validity of the proceeding were observed, including service of necessary notices, qualifications of the administrator, and the date of the approval of his bond or other action necessary to start the running of any statutes of limitation.

In all instances where title has been or is to be conveyed by administrator's deed, the abstract should also show sufficient of the proceeding for authority to sell and convey and of the facts appearing in the record, to determine whether the proceeding was regular and all statutory requirements essential to the validity of the sale and conveyance were observed.

If there has been administration, but title has been or is to be conveyed by deed of the intestate's heirs as established in the proceeding,

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the abstract should show the correct names of all persons determined to be heirs as they appear in the proceeding, and should also show whether debts and charges, including all taxes against the estate, have been paid or provided for, and, where necessary, whether there has been final distribution of the estate and discharge of the administrator.

Whether or not there has been administration, if the conveyance to the United States is to be made by the intestate's heirs, and the intestate's heirs have not been established in a judicial proceeding, determination of heirship will be required as hereinafter provided.

Foreclosure Proceedings

In all cases the abstract should disclose sufficient of the mortgage foreclosed to determine the validity and effect of the foreclosure, including the sum secured, description of the premises, conditions of the mortgage, signatures, dates of execution and recording, and the nature of the default.

If the foreclosure is by judicial proceeding, the abstract should show the names of all persons made parties to the foreclosure case and sufficient of the record to determine the jurisdiction of the court, the regularity of the proceeding, whether all necessary parties had proper notice, and whether the provisions of the foreclosure statute were adequately observed.

If foreclosure is under a power of sale, the terms of the power, compliance or noncompliance therewith and with applicable statutory provisions, should appear. Partial or installment foreclosures, continuing the balance of the mortgage in effect, must be affirmatively shown.

Sales by Receivers, Execution Sales, Tax Sales, Divorces, and Other Judicial Proceedings

The abstract should fully disclose sufficient of the record of all sales by receivers, execution sales, tax sales, divorces, and other judicial proceedings affecting the title to the land to be acquired, to determine the legal effect of such sales or proceedings, and whether all statutory requirements have been observed and the time for redemption, appeal, or reopening the matter has expired.

TITLE 5: LANDS DIVISION**Sales by Trustees and Others in a Fiduciary or Representative Capacity**

The abstract should contain all essential parts of trust instruments, powers of attorney, and of the record of any court proceedings conferring authority for conveyances in the chain of title by fiduciaries or persons acting in a representative capacity. Any conditions or limitations on the authority of a fiduciary or representative, contained in such instruments or proceedings, or in any deed to the trustee, or to the beneficiary or principal for whom such trustee or representative is acting, should be fully set forth and, where possible, the abstract should show whether such conditions have been fulfilled.

Search for Liens of Judgments and Decrees of Federal Courts

Search is required of the Federal court records in all divisions of the district where the land lies for possible liens of judgments and decrees of Federal courts in those States which have not enacted a statute authorizing the judgments and decrees of the United States courts to be registered, recorded, docketed, indexed, or otherwise conformed to the rules and requirements relating to the judgments and decrees of the courts of the State. (28 U. S. C. 1962.)

In those States which have enacted such conformity statutes (in accordance with the provisions of 28 U. S. C. 1962), no search of the Federal court records is necessary for liens of judgments and decrees, unless under the State law judgments and decrees of the State courts become liens on the property of the judgment debtor in the county where rendered, upon entry in the court where rendered, in which case search of the Federal court records is necessary if those records are located in the county in which the land is situated.

Dedication and Vacation of Streets and Alleys

When the land includes street or alley areas, dedicated or vacated, there must be shown all matters of record affecting the ownership of such areas, including the following:

- (a) The complete proceeding had upon such dedication and, if vacated, the vacation proceedings.
- (b) All facts of record bearing on the existence or elimination of prior rights of the public, prescriptive or otherwise, and rights of public utilities, if any.

TITLE 5: LANDS DIVISION**Special Assessments for Improvements, School Districts, Etc.**

Abstracts containing references to assessments for drainage, school, or other special improvement districts, water, paving, sewer and other assessments, should set out, in addition to the current and delinquent assessments, the total benefit assessments and charges against the land, and should contain references to the statutes creating the districts and establishing the liens.

Abstracter's Certificate

A satisfactory certificate of the abstracter must be made a part of the abstract. Generally, certificates will be acceptable if in the form approved by a title association of recognized standing in the State where the land is situated and if the abstracter certifies that he has examined all public records pertaining to the title for the required period of search, and that all matters of record affecting the title are correctly shown in the abstract. In those States where the liability of the abstracter is based upon the contract to search the title, the certificate should contain a statement that the abstract is furnished to the United States of America (or its grantor) and assigns. Otherwise, and generally, the certificate should not be limited to any contracting party, other person or corporation.

FORM AND CONTENTS OF CERTIFICATES OF TITLE AND TITLE INSURANCE POLICY

Preliminary reports or binders, when satisfactory in form, of approved title companies based upon a preliminary search and committing such companies to issue final certificates of title or title insurance policies in the approved form, will be accepted, as a basis for preliminary opinions which contemplate further submission of the matter for final approval of title. See Appendix, Forms 24, 26, 27, 28, and 29 of these regulations.

Period of Search

In general, certificates of title and title insurance policies based upon a search of all records affecting the title and unqualified as to the period of search are preferred and should be issued. However, as to "low value" lands and specific types of easements as defined in the instructions relating to abstracts, certificates of title or title insurance policies may be limited to the periods of search prescribed in those instructions provided the certificates or policies contain statements to the effect that the title of the sovereign has been divested, and set forth any reservations which are contained in the patents or grants.

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TITLE 5: LANDS DIVISION**Limitation of Liability**

A certificate of title or title insurance policy by one title company for a single acquisition valued at more than 25 percent of the admitted assets (after deducting existing liabilities secured or unsecured and excluding any trust or escrow funds) of the issuing company is not acceptable.

Certificates of title or title insurance policies shall not limit the liability of the title company to a sum less than 50 percent of the reasonable value of the property. As to acquisitions valued at more than \$50,000, the limitation of liability of the issuing title company under the certificate of title or title insurance policy may be limited to 50 percent of the first \$50,000 and 25 percent of that portion of the value in excess of that amount.

PLATS

The title evidence should include or be accompanied by a plat or plan, based on a survey by a competent surveyor or engineer, sufficient to enable the examining attorney to locate the land described in the title evidence. Any encroachments or rights-of-way, on or over the land, should be shown or noted on the plat. If the land is described by metes and bounds, or by lands of adjoining owners, abutting streets, ways, etc., its boundaries should be defined on the plat by courses, distances, and monuments, natural or otherwise, and the ownership and contiguous boundaries of adjoining lands and names of abutting streets, ways, etc. When the land is part of a subdivision, a copy of the subdivision plat, or the section thereof in which the land is located, should be submitted. If necessary to identify the land with a United States patent or a State grant which is the source of title, a plat of the land being acquired should be superimposed on a copy of the plat of the United States survey or State grant. If the land being acquired is part of a larger tract described in an abstract, it should, when necessary for its identification, be shown drawn to a common scale on a map showing the larger tract and any successive diminishing tracts.

SUPPLEMENTAL AND SUPPORTING TITLE EVIDENCE

The closing of transactions is often delayed due to failure to supply necessary supporting title data. Requirements covering some of these items are indicated below.

TITLE 5: LANDS DIVISION**Sales by Corporations**

Private corporations.—The abstract, certificate of title, or title insurance policy should contain or be accompanied by sufficient portions of the charters or other records of corporations, conveying to the United States, to determine the power of the corporations to hold and convey real estate and the validity of such conveyances. In jurisdictions where franchise taxes are a lien, or where nonpayment of such taxes or failure to file required reports or statements suspends or terminates a corporation's power to do business or transfer property, the title evidence should also be accompanied by a certificate or statement of the proper State officer showing payment of such taxes and that the corporation is in good standing. A certified copy of the resolution of the proper corporate body, authorizing the conveyance to the United States, is required. In case of conveyances of all or substantially all of the real estate of such a corporation, a certified copy of a resolution authorizing the conveyance, enacted in compliance with pertinent statutory requirements at a meeting of stockholders, is necessary.

Public Corporations.—Where the abstract discloses a public corporation as grantor in the chain of title, or the vendor to the United States is a public corporation, the abstract should include or be accompanied by sufficient portions of the charter, resolutions, or other source of authority of each such corporation to convey land, and also with evidence of compliance with all statutory requirements necessary to the transfer of a valid title. This data should also accompany certificates of title and title insurance policies when public corporations are vendors to the United States.

Determination of Heirship

When the conveyance to the United States is by the intestate's heirs and there has been no judicial determination of heirship, the fact that the grantors are all the heirs of the deceased must be judicially established where practicable. If such judicial determination is impracticable, proof of heirship must be shown by acceptable affidavits (Appendix, form 27) of the grantors and, if possible, of two or more disinterested reputable persons having knowledge of the facts.

Adverse Possession

Evidence of adverse possession, when required, must include satisfactory affidavits of possession, which shall contain the following:

- (a) Execution by three or more reputable persons living in the vicinity of the land and having no interest in the sale of the property;

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(b) Identification of the land and a statement of the character, extent, and duration of possession for at least as long as the maximum local statutory period of limitations, prescriptions, or adverse possession, but not less than 22 years; and

(c) All necessary facts fully set out, together with convincing proof of the establishment of title by adverse possession under local law. The affidavits should not contain mere conclusions of the affiants.

In cases where large tracts of land are being acquired which embrace what formerly were smaller tracts, the affidavits of adverse possession must relate specifically to the component parts of such tracts and contain sufficient facts to establish adverse possession to each such part.

Where two or more grants, patents, or transfers affect the same land, the exact location of the land over which the acts of possession are relied upon must be shown on a map and by the affidavits.

Where the acquiring agency does not contemplate acquisition of the land subject to mineral, or other rights or easements of any kind, appearing in the chain of title, such affidavits must show convincing proof of adverse possession against any and all such rights or interests.

Unrecorded Title Papers

In all cases any unrecorded title papers and copies of resolutions, ordinances, and title opinions containing references to statutes or cases in point relating to the condition of the title or objections thereto with respect to such land, which may be available to the vendor, should accompany the affidavits.

Deed to the United States

The deed to the United States should generally adhere to the following requirements:

(a) Be a general warranty deed; however, this requirement may be waived, upon a proper showing, as to conveyances by States, municipal corporations, and fiduciaries and other persons acting solely in a representative capacity.

(b) Disclose the capacity in which any grantor acts who conveys in other than an individual capacity.

(c) Show the name of the grantor in the body of the deed and its acknowledgment, be signed by him, exactly as his name appears as grantee in the conveyance to him; and account for any unavoidable difference by a recital identifying the grantor with the grantee in the preceding conveyance.

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- (d) Disclose the marital status of each grantor.
- (e) Recite the true consideration and the receipt thereof.
- (f) Convey the land to the "United States of America and its assigns."
- (g) Contain a proper description of the land.
- (h) Convey all the right, title, and interest of the grantor in and to any alleys, streets, ways, strips, or gores abutting or adjoining the land.
- (i) Contain no reservations or exceptions not approved by the department or agency of the Government acquiring the land; however, when land is to be conveyed subject to certain rights, such as easements or mineral rights thought to be outstanding in third parties, they must not be *excepted* from the conveyance, but the deed should be framed to convey all the grantor's right, title, and interest *subject to* the outstanding rights, unless the contract or option expressly provides otherwise.
- (j) Refer to the deed(s) to the grantor(s), or other source of grantor's title, by book, page, and place of record, wherever customary or required by statute.
- (k) Contain a reference to the name of the agency for which the lands are being acquired. This statement should follow the description of the land and in no instance should it be included in the granting, habendum or warranty provisions of the deed.
- (l) Release all rights of homestead, dower, curtesy, and other interests of the grantor's spouse, as required by local law.
- (m) Be signed, sealed, attested, and acknowledged by all grantors and their spouses, as required by local law.
- (n) If executed by a corporation, be signed in the full and correct name of the corporation by its duly authorized officer or officers, sealed with the corporate seal, attested and acknowledged, as required by local law.
- (o) If executed by an attorney in fact, be signed in the name of the principal by the attorney, properly acknowledged by the attorney as the free act and deed of the principal, and be accompanied by the original or a certified copy of the power of attorney and satisfactory proof that the principal was living and the power in force at the time of its exercise.
- (p) Have affixed sufficient documentary revenue stamps.

Certificate of Possession

There must be submitted, as part of the title evidence, a certificate of possession, based on an inspection and inquiry made in the course

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of the closing of the acquisition, by a duly authorized employee of the acquiring agency, or by an attorney of the Department of Justice. The certificate of possession must be in form approved by the Department of Justice. The standard form of certificate (Appendix, form 26) should be used in all acquisitions.

APPRAISALS**EMPLOYMENT OF EXPERT WITNESSES, APPRAISERS, ETC.**

The Appraisal Section of the Lands Division was created principally to assist the personnel of the Land Acquisition and Trial Sections, as well as United States Attorneys and field attorneys, in arranging for the employment of expert witnesses, appraisers, engineers, etc., who are required to assist the Government in Lands Division matters, in establishing the fair value of land or property being acquired by the United States, or in defending claims against the United States involving property. The employment of such experts and their compensation, as well as the manner in which the appraisals are to be made and reports are to be prepared, shall be referred to this Section for approval.

APPEALS

Appeals in Lands Division cases are handled in the Appellate Section of the Division at the seat of Government, including the preparation of records, briefs and the assignment of cases for argument. Procedure to be followed with respect to Lands Division appeals appears in Title 6, Appeals.

MISCELLANEOUS FUNCTIONS**CIVIL OR POLITICAL RIGHTS ON GOVERNMENT LANDS**

Various legal functions of the Division not within the assignments of other Sections, such as correspondence, inquiries and referred legal questions pertaining to Divisional activities, as well as the consideration of proposed and pending legislation are handled in the Legislation and General Section. In the main these functions are intra-departmental. Probably the only instances in which the Legislation and General Section works with the United States Attorneys and field attorneys are in connection with questions concerning the civil affairs and rights of inhabitants of Government lands. (See Title 2, Offenses on Government Reservations.)

TITLE 5: LANDS DIVISION**ASSISTANCE TO UNITED STATES ATTORNEYS AND
FIELD STAFF**

The Lands Division has available excellent facilities of various kinds which should be of considerable help to the United States Attorneys and field attorneys of the Division. In addition to a corps of research consultants who have become experts in the various fields of law, elaborate research files, indexes and digests are currently maintained. Close liaison exists between the attorneys of the Division and officials of the several Government departments and agencies which the Division represents, and the facilities of those agencies are at our disposal. Prompt attention will be given to requests for assistance in any of these matters.

The Division is revising its Federal Eminent Domain Manual, popularly known as the "Red Book," which was compiled in 1942, to facilitate the handling of condemnation cases. Many chapters have been revised and distributed during recent months. These chapters, as well as the Manual, in two volumes, should be found in the office of each United States Attorney and field attorney.

ADMINISTRATIVE AND FISCAL INSTRUCTIONS

The costs of cases handled by the Lands Division, which are payable by the Department of Justice, are paid from funds appropriated each year. The funds are disbursed at Washington and all vouchers should be submitted to the Department for payment addressed to the attention of the Administrative Section, Lands Division.

SALARY

In general, all attorneys, stenographers, and clerks employed by the Lands Division will be included in the payroll prepared in the Department. Individual vouchers should not be submitted unless specific instructions are issued to do so. Any change of status, such as resignation, leave without pay, name changes, or changes in exemption classifications for withholding tax deductions, should be reported immediately to the Lands Division in order that payrolls will be prepared in the correct form.

Regulations provide for a 2-weeks' delay in the payment of compensation. The practical effect of such a procedure is that when an employee works 4 weeks he is then compensated for the first 2 weeks; at the completion of 6 weeks, he is paid for the second 2-weeks' period, etc. Two weeks after an appointment is ended by termination,

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transfer or retirement the employee will receive another salary check covering the last 2 weeks of employment.

AUTHORIZATIONS

As is the case in other matters no expenses in connection with Lands Division work are to be incurred without previous authorization from the Department. (See Title 8, Authority To Incur Expenses.)

TRAVEL EXPENSES

Generally.—No expense will be paid unless authorized in advance by the Department either by telegram or letter. Claims for reimbursement of travel expenses must be made on Standard Form No. 1012 (Title 8, Appendix, form 26) in triplicate, i. e., the original on Standard Form No. 1012 and three memorandum copies on Standard Form No. 1012a. A copy of the letter or telegram authorizing travel must be attached to each copy of Standard Form No. 1012 and 1012a.

Submission of vouchers.—Vouchers covering expenses for travel performed within any month must be submitted to the Department at the end of that month.

Appropriation.—The space on the face of the travel voucher for the appropriation chargeable must be left blank.

Quarterly travel letters.—All attorneys whose travel is authorized by quarterly travel letters must indicate in their vouchers for reimbursement of travel expenses the case or cases with reference to which the travel was performed. Travel vouchers which do not give the required information will be returned to the traveler.

ADVERTISING AND PUBLICATION OF NOTICES

Requests for authority to incur publication expenses must be submitted to the Department on Forms 25B (Title 8, Appendix, form 23), and approval of the expenses obtained prior to publication.

RECORDING FEES

Generally.—In order to expedite payment of vouchers covering recording fees it is not necessary to submit a Form 25B requesting authority to incur the expense of recording incident to any Lands Division case. In lieu of Form 25B the Department issues general letters authorizing the incurrence of such recording expenses as may be necessary. These letters are issued on July 1 of each year and authorize the incurrence of recording expenses for the then current fiscal year.

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The account should be prepared on the original Standard Form No. 1034 (Title 8, Appendix, form 24), and two memorandum copies, Standard Form No. 1034a. Attention is directed to the fact that the account must contain a reference to the State law authorizing the fees and must be fully itemized to show the number of folios, the cost per folio, etc., so that the charges may be verified. The voucher should also be officially approved and forwarded to the Department for payment. It is not necessary to support the voucher by copies of the letter of authorization. In view of the fact that the Comptroller General requires that the vouchers be prepared as illustrated, it is suggested that extreme care be taken to comply with the above instructions. Vouchers which are erroneously prepared will necessarily be returned for correction.

This procedure applies only to the expense of recording and does not affect the procedure in regard to other expenses.

Payment in advance.—With few exceptions the recorders of deeds throughout the country will submit vouchers to the Department to cover recording fees after the services have been performed. However, in a few cases the recorders or other officials have refused to render this service without payment in advance. Advance payments may be made upon a showing of necessity. The voucher should be prepared in the same manner as outlined above and should contain a reference to Circular No. 3992, dated June 6, 1947. In addition the voucher should contain the certificate signed by the official procuring the services, "I certify that this advance payment is necessary in the public interest."

The check in payment of the voucher will be drawn in favor of the payee; however, the check will be forwarded to the attorney procuring the services, who will in turn present it to the recorder or other official in payment for the recording services.

Advance payments are to be made only when so required by local law. In payments may be made after the services have been rendered, there can be no change in the present method of payment following completion of services.

**FEES OF COMMISSIONERS, APPRAISERS, ATTORNEYS
AD LITEM, GUARDIANS AD LITEM, ETC., APPOINTED
BY THE COURT**

The appropriation "Salaries and Expenses, General Legal Activities" is chargeable with all fees for services rendered by commissioners, appraisers, attorneys ad litem, guardians ad litem, etc., appointed by the court in connection with the prosecution of Lands Division cases. Although the court sets these fees, Government counsel should

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in each instance make recommendations to the court with the view of keeping these expenses consistent with local practices and commensurate with the importance of the case and the amount of work to be performed.

As an aid to the court in establishing fees for commissioners, counsel for the Government should inform the court of such matters as the location, nature and extent of the property involved in the trial, any problems which may complicate the assessment of just compensation, an approximation of time necessary for trial, and similar helpful data which may have a bearing in arriving at just and impartial fees.

Fees for services to be rendered under court appointments and payable from Government appropriations should include all necessary expenses incident to their work. Per diem in lieu of subsistence and traveling expenses will not be allowed as a separate item of expense. The Department reserves the right to refuse payment of unusual and unreasonable fees, and in such cases a petition should be filed in court for the reduction of the fees, which should be supported with the necessary facts showing the unreasonableness of the fees.

In the submission of requests on Forms 25-B for incurring expenses for fees, the requests should disclose the rate per day set by the court, the approximate number of days needed to perform the particular service and the total estimated expense.

PURCHASE AND CONTINUATION OF ABSTRACTS AND OTHER EVIDENCE OF TITLE

Abstracts of title in direct purchase cases.—When land is acquired by direct purchase, the acquiring agency is required to furnish abstracts or certificate of title or other evidence of title at its own expense unless by contract or statute the vendors are required to furnish such evidence of title. The Attorney General may, in his discretion, base his opinion upon a certificate of title of a title company.

Abstracts of title in condemnation cases.—When land is being acquired by condemnation proceedings, abstracts or other evidence of title are obtained either from the acquiring agency, the landowner, or by the Department of Justice.

If evidence of title is available to the agency, it is either delivered to the Department and transmitted to the field attorney with a certified copy of the formal request for condemnation, or the field attorney is instructed to procure the abstracts which the Department has been advised may be obtained in the field office of the acquiring agency.

In the event that title evidence is not available through the acquiring

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agency, and the landowner is not obligated to furnish it under a contract, the field attorney should immediately invite the landowner, as a means of expediting the payment of compensation to him at the earliest possible date, to furnish any abstract or other title evidence he may have. Such evidence may be returned if it includes land other than that being acquired, or the proceeding is dismissed. When title evidence is voluntarily furnished by the owner, the expense of continuation will be paid by the Department. When title evidence is furnished by the landowner pursuant to his contract, any necessary continuations are paid by him pursuant to the terms of the agreement.

In the event neither the agency nor the owner provides the abstracts or other evidence, the field attorney should immediately obtain bids for the preparation of abstracts or certificate of title, conforming to the requirements of the Department. When available abstracts or other title evidence has been voluntarily furnished by the landowner, the bids for the preparation of unsupplied evidence should provide for the continuation. Title evidence furnished by the agencies may be con-

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tinued at the expense of the Department. All requests for bids should be uniform and require that the material be furnished within a specified time. All bids received should be submitted to the Department with a recommendation for acceptance of the low bid. When, for any reason, the low bid is not recommended for acceptance, the bids must be accompanied by a justification.

When it can be ascertained that the cost of the abstract of title will not exceed \$100, request for authorization for the abstract should be forwarded to the Department on Form 25B. Under these circumstances, there is no necessity to enter into a contract to obtain the necessary abstract or continuation of an abstract. However, when the cost of the abstract or continuation is in excess of \$100, it will be necessary to solicit bids and enter into a contract in accordance with the instructions set out above. Copies of the approved contract and instructions for the submission of vouchers are subsequently forwarded to the field attorney.

OFFICE SUPPLIES AND EQUIPMENT

All supplies and equipment purchased specifically for use by Lands Division field attorneys must be requisitioned from the Department and may not be purchased on the open market unless specifically authorized. Forms for this purpose, which must be submitted *in duplicate*, will be furnished upon request. They should be directed to the Department in Washington, attention: Lands Division, Administrative Section.

APPROVAL OF VOUCHERS

All vouchers must be presented to the United States Attorney or the field attorney for his signature in the space provided therefor on the voucher. The attorney's signature will constitute his certificate that the services have been satisfactorily performed as authorized, or that the items of merchandise have been received in good condition, that the prices charged are just and reasonable and in accordance with the agreement, and are a proper charge against the Government. The attorney must not approve vouchers which are unreasonable or which, for any other reason deemed by him to be sufficient, should not be paid.

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U. S. ATTORNEYS MANUAL 1953

APPENDIX OF FORMS

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Form No. 1

CLERK'S RECEIPT

United States District Court _____ District of _____
 _____ Division.

United States of America }
 v. } Case No. _____ Civil
 _____ }

I, _____, Clerk of the United States District Court for the _____ District of _____, do hereby certify that on the _____ day of _____, 19____, I received from the United States of America, petitioner herein, and deposited in the Registry of the Court, the sum of \$_____, pursuant to judgment hereinbefore entered confirming the awards in the above-entitled condemnation proceeding.

This the _____ day of _____, 19____.

[SEAL]

Clerk.

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N. B.: If the receipt is for money deposited under a declaration of taking, the words "being the amount of the estimated compensation mentioned in a declaration of taking filed" should be inserted in lieu of the words "pursuant to judgment hereinbefore entered confirming the awards."

Form No. 2

CERTIFICATE AS TO REGULARITY OF CONDEMNATION CASES

Department of Justice

File No. _____

I, _____, do hereby certify that
(Name and title)

the proceedings in the condemnation case entitled United States of America v. _____, No. _____ Civil, pending in the United States District Court for the _____ District of _____, _____ Division, have been conducted according to law and are regular; that the court had jurisdiction of the subject matter of said action and of all persons having or claiming to have any possible interest in said lands, either by actual or constructive service of process, according to law; and that when the amount of the awards has been paid into the registry of said court, pursuant to the terms of the judgment heretofore entered in said cause on _____, 19____, a valid title to said lands, as described in said judgment, will vest in the United States of America (subject to the easements, outstanding rights and reservations as recited in said judgment).

I further certify that the following tracts, or parts of tracts, were eliminated from said proceeding pursuant to instructions received from the Department of Justice:

I further certify that the evidence of title covering the lands involved in said proceeding has been extended to a date subsequent to the date of filing of a notice of *lis pendens* (or subsequent to the date of filing the petition, if such filing constitutes a notice of *lis pendens*), and that all persons shown by such extension to have acquired any interest in said lands since the date of prior certificates of the evidence of title have been made parties defendant in the aforesaid cause and their interests will be disposed of by orders entered therein.

Dated at _____, this _____ day of _____, A. D. 19____.

United States Attorney.

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Form No. 3

**CERTIFICATE AS TO PARTIES IN POSSESSION AND
MECHANICS' LIENS**

I, the undersigned, state and certify:

1. That on the _____ day of _____, 19____, I made a personal investigation and examination of and upon the land designated as Tract No. _____, _____ project, containing _____ acres, which is involved in a certain condemnation case now pending and undisposed of in the United States District Court for the _____ District of _____, No. _____, Civil, entitled United States of America v. _____;

2. That I found thereon no evidence of any labor having been performed or of any material having been furnished, placed or used thereon, within the past _____ months in connection with the making of any repairs or improvements, except as follows _____

3. That I made inquiry of the owner of said premises and of the occupants I found thereon, and learned from them that within their knowledge nothing had been done about or upon said premises within the past _____ months that would in any way have entitled anyone to a lien upon said premises, either for labor performed or material furnished to be used or used thereon except as above;

4. That the following are the only persons, firms, or corporations found to be in possession of said premises or any part thereof:

-----; (Name) (Interest claimed)

5. That _____, whose address is _____, is reputed to be the owner of said land;

6. That I inquired of the owners of said premises and of such other persons as I thought might possess information, and found that there was no person, firm, or corporation having or claiming to have any right, title, or interest in or to said premises or any part thereof, whether under any outstanding and unrecorded lease, deed, mortgage, instrument of conveyance, contract, or otherwise, except as follows _____

7. I further certify and state that to the best of my knowledge and belief, based upon actual and diligent inquiry made, there is outstanding no right whatsoever in anyone to the possession of or a right, title, lien or estate in or to said premises, except such as are disclosed and evidenced by the public records or by this certificate.

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Dated at _____, this
 _____ day of _____, 19____
 (City) (State)

Title _____
 Address _____

Form No. 4

LETTER ADVISING LANDOWNERS OF DEPOSIT OF FUNDS

DEAR SIR OR MADAM: There is pending in the United States District Court at _____ a proceeding entitled United States v _____, Civil No. _____, to condemn land for the _____
 (Project)

I am informed that you are the owner of or have some interest in Tract No. _____ containing _____ acres which is definitely described in the petition for condemnation (as amended).

On _____, 19____, there was filed in the proceeding a declaration of taking declaring that the fee-simple title (or such less or temporary interest as the case may be) to the above-described land has been taken by the United States and at the same time there was deposited into court the sum of \$_____, the amount estimated to be just compensation for your land. While this estimation is based upon appraisals made by appraisers and real estate men believed to be competent and qualified, it is not binding upon either you or the Government and the exact amount to be paid for the taking of your land will be determined either by agreement or by trial or hearing in proceeding.

However, the amount deposited is available for distribution in the discretion of the court to those found to be entitled to payment, without regard to whether or not an agreement has been reached and without prejudice to your right to claim a larger amount.

Representatives of the Department of Justice will be glad to cooperate with you and with the court in having distribution made of the amount deposited. To do this, it is suggested that you call at my office to fill out and sign the necessary papers. It will be necessary, of course, that arrangements be made for the payment of all liens and encumbrances such as mortgages and taxes, against the land.

You will understand, of course, that the filing of the declaration of taking and the deposit of estimated just compensation will not interfere with or prevent the reaching of an agreement with you as to the amount to be paid for the taking of your land.

Sincerely,

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COMPLAINT IN CONDEMNATION

United States District Court for the _____ District of _____
 United States of America, plaintiff

	<i>v.</i>		
1,000 acres 100 tracts 10 parcels	}	of land in (here insert general location as "county of _____," or "city of _____," _____")	Civil Action No. ____ Complaint
John Doe, et al., and Unknown Owners,			
defendants			

1. This is an action of a civil nature brought by the United States of America at the request of (here insert title of the official of the acquiring agency requesting condemnation) for the taking of property under power of eminent domain and for the ascertainment and award of just compensation to the owners and parties in interest.

2. The authority for the taking is (here cite all acts and executive orders authorizing the acquisition by condemnation).

3. The use for which the property is to be taken is (here state briefly the use, "as a post office site," "for military purposes," "for defense housing").

4. The interest in the property to be acquired is (here insert a statement of the interest or estate to be acquired).

5. The property so to be taken is described in the Exhibit A hereto attached. (The Exhibit A should contain a short legal description of the property sufficient for its identification.)

6. The persons having or claiming an interest in the property (whose names are ascertainable by a reasonably diligent search of the records and those whose names have otherwise been learned)¹ are:

(Here designate as to each separate piece of property by tract or parcel number the persons having or claiming an interest in the particular property.)²

7. The (here insert names of local taxing authorities) may have or claim an interest in the property by reason of taxes and assessments due and exigible.

¹ Substitute words "whose names are now known" for words in parentheses when time will not permit definite ascertainment of names of parties defendant prior to the commencement of the action, as when immediate possession is required.

² When a perimeter description embracing numerous tracts is used at the commencement of the action, designation of parties defendant by tract or parcel numbers is not feasible, but such separate designation should be effected as early as practicable.

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8. In addition to the persons named, there are or may be others who have or may claim some interest in the property to be taken, whose names are unknown to the plaintiff and such persons are made parties to the action under the designation "Unknown Owners."

9. Contract(s)¹ determining the amount(s) of just compensation payable by plaintiff have been entered into with the following named defendant(s) :

Parcel No.	Defendant(s)
-----	-----
-----	-----
-----	-----

(parcel numbers and names of defendants executing contracts should be listed above)

Wherefore the plaintiff demands judgment that the property be condemned and that just compensation for the taking be ascertained and awarded and for such other relief as may be lawful and proper.

United States Attorney.

Address -----

Trial by jury of the issue of just compensation is demanded by plaintiff.

Form No. 6

NOTICE OF CONDEMNATION

(Caption as in Complaint)

Notice

To (here insert the names of the defendants to whom notice is directed ; joint or several notices may be used) :

You are hereby notified that a complaint in condemnation has heretofore been filed in the office of the clerk of the above-named court in an action to condemn (here state the interest or estate to be acquired, as "an estate in fee simple," "the right to use and occupy," "an easement for a power transmission line") in the property described in the Exhibit A attached hereto and made a part hereof for public use for (here state briefly the use, as "a post office site," "military purposes," "defense housing").

The authority for the taking is (here cite all acts and executive orders authorizing the acquisition by condemnation).

You are further notified that if you have any objection or defense to the taking of your property you are required to serve upon plaintiff's attorney at the address herein designated within twenty days (after personal service of this notice upon you, exclusive of the day

¹ For use when the case requires.

* The Exhibit A should contain a short legal description sufficient for the identification of the property in which the defendants to whom the particular notice is directed may claim

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of service)¹ an answer identifying the property in which you claim to have an interest, stating the nature and extent of the interest claimed and stating all your objections and defenses to the taking of your property. A failure so to serve an answer shall constitute a consent to the taking and to the authority of the court to proceed to hear the action and to fix the just compensation and shall constitute a waiver of all defenses and objections not so presented.

You are further notified that if you have no objection or defense to the taking you may serve upon plaintiff's attorney a notice of appearance designating the property in which you claim to be interested, and thereafter you shall receive notice of all proceedings affecting the said property.

You are further notified that at the trial of the issue of just compensation, whether or not you have answered or served a notice of appearance, you may present evidence as to the amount of the compensation to be paid for the property in which you have any interest and you may share in the distribution of the award of compensation.

You are further notified that trial by jury at the issue of just compensation is demanded by plaintiff.

United States Attorney.

Address -----

Dated -----

Form No. 7

CERTIFICATE FOR SERVICE BY PUBLICATION

(Caption as in Complaint) Certificate for Service by Publication

-----, attorney for plaintiff, hereby certifies that he believes the hereinafter named defendant(s) cannot be personally served because after diligent inquiry within the state in which this action is pending the places of residence of the said defendants cannot be ascertained by plaintiff, or, if ascertained, the places of residence of said defendants are beyond the territorial limits of personal service as provided in Rule 71A, Federal Rules of Civil Procedure.

Names of Defendants.

United States Attorney.

Address -----

Dated -----

¹ The exact same form of notice should be used for service by publication, changed only by substituting the date of the last publication of notice for the words in parentheses.

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Form No. 8

CERTIFICATE OF PUBLICATION AND MAILING(Caption as in
Complaint)

Certificate of Publication and Mailing

-----, Attorney for plaintiff,
hereby certifies that he caused the publication once a week for three
successive weeks in the (here insert name of newspaper) ¹ of the notice,
a printed copy of which with the name and dates of the newspaper
marked thereon is attached hereto and that prior to the date of last
publication of said notice, he caused a copy thereof to be mailed to
the defendants named therein at their last known places of residence.

United States Attorney.

Address -----

Dated -----

Form No. 9

MOTION FOR ORDER FOR DELIVERY OF POSSESSION(Caption as in
Complaint)

Motion for Order for Delivery of Possession

Plaintiff moves the Court for an order requiring all defendants to
this action and any and all persons in possession or control of the
property described in the complaint filed herein to surrender posses-
sion of the said property, to the extent of the estate to be condemned,
to plaintiff (on or before -----) (immediately)

(Here insert date)

and as grounds therefor plaintiff states:

1. (Here insert title of the official of the acquiring agency request-
ing condemnation) has found and determined that it is necessary and
advantageous to the interests of plaintiff to acquire such possession.
2. Plaintiff is entitled to such possession as a matter of right.

Form No. 10

ORDER FOR DELIVERY OF POSSESSION

(Caption as in Complaint)

Order for Delivery of Possession

This action coming on for hearing (ex parte) upon motion of plain-
tiff for an order for the surrender of possession of the property de-

¹ Publication must be in a newspaper published in the county where the property is
located, or if there is no such newspaper, then in a newspaper having a general circulation
where the property is located.

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scribed in the complain filed herein to plaintiff, and it appearing that plaintiff is entitled to possession of the said property,

It is this ____ day of _____, 19____, adjudged that all defendants to this action and all persons in possession or control of the property described in the complaint filed herein shall surrender possession of the said property, to the extent of the estate being condemned, to plaintiff (on or before _____) (immediately);¹ provided that a copy of this order shall be served upon all persons in possession or control of the said property (on or before _____) (forthwith).¹
(Here insert date)

United States District Judge.

Form No. 11

ANSWER OF DEFENDANT

(Caption as in Complaint)

Answer²

1. _____, defendant, (by his attorney, _____,) states that he claims to have an interest in the property described (as Parcel or Tract No. _____ in the complaint filed herein) (as follows: here insert a brief legal description sufficient for identification of property).³

2. The nature and extent of interest so claimed is (here state, as "fee-simple title, subject only to _____," "mortgagee," "owner of easement for private road")

3. The use for which the property is sought to be condemned is not a public use.⁴

4. The condemnation of the property is not authorized by law.⁴

5. The court lacks jurisdiction because:⁴

Therefore defendant demands:

1. That the complaint be dismissed.⁴

2. That just compensation for the taking be ascertained and awarded and for such other relief as may be lawful and proper.

(Signed by defendant or his attorney)

Dated _____

Address _____

¹ Use words in either set of parentheses, as appropriate.

² Form of Answer is furnished *solely* for convenience of defendants.

³ Use words in either set of parentheses, as appropriate.

⁴ For use where defendant has some legal objection or defense to the taking.

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Trial by jury of the issue of just compensation is demanded by defendant.¹

(Signed by defendant or his attorney)

Form No. 12

NOTICE OF APPEARANCE OF DEFENDANT

(Caption as in Complaint)

Notice of Appearance²

-----, defendant, (by his attorney, -----,) states that he claims to have an interest as (here indicate nature of interest as "owner," "mortgagee," "owner of easement for private road") in the property described (a Parcel or Tract No. ----- in the complaint filed herein) (as follows: here insert a brief legal description sufficient for the identification of property).³

Wherefore defendant demands that he receive notice of all proceedings affecting said property.

(Signed by owner or his attorney)

Dated ----- Address -----

Trial by jury of the issue of just compensation is demanded by defendant.⁴

(Signed by owner or his attorney)

Form No. 13

STIPULATION FOR INCREASE OF COMPENSATION IN HOUSING CASES

In the District Court of the United States for the -----
District of ----- Division.

United States of America, petitioner

Civil No. -----

STIPULATION FOR INCREASE IN COMPENSATION PURSUANT TO ACT OF CONGRESS APPROVED APRIL 20, 1950 (42 U. S. C. A. SUPP. 1585 (b)), AS AMENDED.

Whereas, by judgment(s) entered in this proceeding on -----, just compensation payable by the United States

¹ For use where desired.

² Form of Notice of Appearance is furnished *solely* for convenience of defendants.

³ Use words in either set of parentheses, as appropriate.

⁴ For use where desired.

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annually for the use of the hereinafter mentioned parcel(s) of land was determined to be as follows:

Parcel No. ----- \$-----

Parcel No. ----- \$-----

(plus an amount equal to the real estate taxes lawfully levied and assessed against the said parcel(s) and

Whereas, the Act of Congress approved April 20, 1950 [64 Stat. 48, 65; 42 U. S. C. A. Supp. 1585 (b), as amended by Act of Congress approved September 1, 1951 (Public Law No. 139, 82d Congress, 1st sess., ch. 378)], directs the Administrator, Housing and Home Finance Agency, upon request of the owner and notwithstanding any existing contractual or other rights or obligations, to increase the amount of future payments for the use by the United States of lands for national defense, war, or veterans' housing, in order to give the owner of the land a return after payment of real estate taxes not exceeding 6 percentum of the lowest appraisal of value of the land before the acquisition of the Government's interest therein, plus 100 percentum of such value, and

Whereas, the authority conferred by said Act of Congress has been delegated by the Administrator, Housing and Home Finance Agency, for administration by the Public Housing Administration,

Now, therefore, it is stipulated and agreed by and between the United States of America and the undersigned owner(s) of the above-mentioned parcel(s) that the just compensation and increased future payments payable annually by the United States of America for the use of said parcel(s) for the annual term beginning----- and for each and every extension or renewal thereof shall be in the following amount/s:

Parcel No. ----- \$-----

Parcel No. ----- \$-----

together with an amount equal to general real estate taxes lawfully levied and assessed against the said parcel(s); without interest or penalties thereon, for the current and each subsequent year the said parcel(s) is (are) used by the United States of America, and

It is Further Stipulated and Agreed that in the event the United States shall terminate its use of the said parcel(s) or any of them during any annual term by the filing in this proceeding of a notice of termination, payment of the above-mentioned amount(s), including the amount(s) equal to general real estate taxes, shall be prorated for such proportionate part(s) of the final annual term and the tax year as the United States shall use the said parcel(s).

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Dated, the _____ day of _____, 19 _____

UNITED STATES OF AMERICA,

By _____

United States Attorney.

Landowner(s) :

Par. No. _____

Approved:

For the Administrator,
Housing and Home Finance Agency

By _____

Lands Division
Form No. 24

CERTIFICATE OF TITLE

Name of title company _____ Address _____

To (_____ and) United States of America :

The _____, a Corporation organized and existing under the laws of the State of _____, with its principal office in the city of _____, hereby certifies that it has made a thorough search of the title to the property described in Schedule A hereof, beginning with the _____ day of _____, 1 _____, and that the title to said property was indefeasibly vested in fee simple of record in _____ as of the _____ day of _____, 19____, free and clear of all encumbrances, defects, interests, and all other matters whatsoever, either of record or otherwise known to the corporation, impairing or adversely affecting the title to said property, except as shown in Schedule B hereof.

The maximum liability of the undersigned under this certificate is limited to the sum of _____.

In consideration of the premium paid, this certificate is issued for the use and benefit of (said _____ and) the United States of America (and each of them).

In Witness Whereof, said Corporation has caused these presents to be signed in its name and behalf, sealed with its corporate seal, and delivered by its proper officers thereunto duly authorized, as of the date last above mentioned.

By _____
(Name of title company)

(Title of executing officer)

Attest:

(Title of attesting officer)

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SCHEDULE A

The property covered by this certificate is accurately and fully described as follows -----

SCHEDULE B

The property described in Schedule A hereof is free and clear from all interests, encumbrances, and defects of title and all other matters whatsoever of record, or which, though not of record, are known to this corporation to exist impairing or adversely affecting the title to said property, except the following:

Lands Division
Form No. 26

CERTIFICATE OF INSPECTION AND POSSESSION

I, ----- a ----- of the Department of -----, hereby certify that on the ----- day of -----, 19____, I made a personal examination and inspection of that certain tract or parcel of land situate in the County of -----, State of ----- designated as Tract No. -----, and containing ----- acres, (proposed to be) acquired by the United States of America in connection with the ----- project, (from -----)

in the condemnation proceeding entitled -----
Civil No. -----

1. That I am fully informed as to the boundaries, lines and corners of said tract; that I found no evidence of any work or labor having been performed or any materials having been furnished in connection with the making of any repairs or improvements on said land; and that I made careful inquiry of the above-named vendor (and of the occupants of said land) and ascertained that nothing had been done on or about said premises within the past ----- months that would entitle any person to a lien upon said premises for work or labor performed or materials furnished.

2. That I also made inquiry of the above-named vendor (and of all occupants of said land) as to his (their) rights of possession and the rights of possession of any person or persons known to him (them), and neither found any evidence nor obtained any information showing

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or tending to show that any person had any rights of possession or other interest in said premises adverse to the rights of the above-named vendor or the United States of America.

3. That I was informed by the above-named vendor (and by all other occupants) that to the best of his (their) knowledge and belief there is no outstanding unrecorded deed, mortgage, lease, contract, or other instrument adversely affecting the title to said premises.

4. That to the best of my knowledge and belief after actual and diligent inquiry and physical inspection of said premises there is no evidence whatever of any vested or accrued water rights for mining, agricultural, manufacturing, or other purpose; nor any ditches or canals constructed by or being used thereon under authority of the United States, nor any exploration or operations whatever for the development of coal, oil, gas, or other minerals on said lands, and that there are no possessory rights now in existence owned or being actively exercised by any third party under any reservation contained in any patent or patents heretofore issued by the United States for said land.

5. That to the best of my knowledge and belief based upon actual and diligent inquiry made there is no outstanding right whatsoever in any person to the possession of said premises nor any outstanding right, title, interest, lien, or estate, existing or being asserted in or to said premises except such as are disclosed and evidenced by the public records.

6. That said premises are now wholly unoccupied and vacant except for the occupancy of _____ as tenant(s) at will, from whom disclaimer(s) of an right, title, and interest in and to said premises, executed on the _____ day of _____, 19____, has (have) been obtained.

Dated this _____ day of _____, 19____.

Approved: _____

Lands Division
Form No. 27

AFFIDAVIT OF HEIRSHIP

I, _____, residing at

(Name of affiant)
_____, in _____
(Street and number)
_____, _____, _____
(City or town) (County) (State)

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(4) (That said decedent left no will, no issue, or no collateral heirs other than those named above and no unpaid debts or claims except as stated below.) (All statements made by the affiant will be considered to be made on the affiant's personal knowledge unless the contrary is expressly indicated.) (That I have made careful inquiry and that to the best of my information and belief said decedent left no will, no issue, or no collateral heirs other than those named above, and no unpaid debts or claims except as stated below.) (The affiant should cross out any statement enclosed in brackets which is not applicable.)

(Unpaid debts)

(5) That the value of the decedent's entire estate at death, including all property, real and personal, then owned by the decedent, did not exceed \$_____.

(6) That I am (not) interested financially or by reason of relationship to said decedent in the proposed conveyance to the United States of America in connection with which this affidavit is furnished, and understand that it is secured for the purpose of inducing the United States to purchase land owned by said decedent.

_____, 19__

_____, ss:

Then personally appeared before me the above-named _____, who subscribed the foregoing affidavit and made oath that the statements contained therein are true.

Lands Division
Form No. 28

DISCLAIMER

State of _____, }
County of _____, } ss.

We (I) _____ (wife) (husband), being first duly sworn, depose and say (deposes and says) that we are (I am) occupying all (a part) of the land (proposed to be) acquired by the United States of America from _____, described as _____ acres, Tract No. _____, lying in _____ County, State of _____, and do hereby aver that we are (I am) occupying said land as the tenants (tenant) of _____; that we (I) claim no right, title, lien or interest in and to the above-described

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premises or any part thereof by reason of said tenancy or otherwise and will vacate said premises upon demand for the possession of said lands by the United States of America.

Dated this _____ day of _____, 19....

(Tenant)

(Spouse)

Witnesses:

Lands Division
Form No. 29

OWNERS TITLE GUARANTEE (INSURANCE) POLICY

No. _____ Amount \$ _____

(Name of Company)

for valuable consideration, does hereby guarantee [insure]

THE UNITED STATES OF AMERICA

against all loss or damage which the party guaranteed [insured] shall sustain by reason of defects in the title of said United States of America to the real estate or interest therein described in schedule A or by reason of liens or incumbrances affecting the title, at the date hereof, excepting only such defects, liens, incumbrances and other matters as are set forth in schedule B below.

The total liability of this company under this policy is limited to _____ Dollars.

This policy is subject to the conditions hereinbelow set forth, which conditions, together with schedules A and B, are made a part of this policy.

In Witness Whereof, (Name of Company) has caused its corporate seal to be hereto affixed and these presents to be signed by its President and attested by its Assistant Secretary, this _____ day of _____ A. D. 19....

President.

ATTEST:

Assistant Secretary.

March 1, 1954

TITLE 5: LANDS DIVISION**SCHEDULE A**

1. The title, estate or interest guaranteed [insured] by this policy.
2. Description of the real estate with respect to which this policy is issued.

SCHEDULE B

Showing defects, liens, incumbrances and other matters excepted from this policy and against which this Company does not guarantee [Insure].

SPECIAL EXCEPTIONS

(Here the Company is to insert general exceptions peculiar to the locality and special exceptions relating solely to property covered in this policy.)

GENERAL EXCEPTIONS*Governmental Powers.*

1. Because of limitations imposed by law on ownership and use of property, or which arise from governmental powers, this policy does not guarantee [insure] against: (a) consequences of the future exercise or enforcement or attempted exercise or enforcement of police power, bankruptcy power, or power of eminent domain, under any existing or future law or governmental regulation; (b) consequences of any law, ordinance or governmental regulation, now or hereafter in force, (including building and zoning ordinances) limiting or regulating the use or enjoyment of the property, estate or interest described in schedule A, or the character, size, use or location of any improvement now or hereafter erected on said property.

Matters Not of Record.

2. The following matters which are not of record at the date of this policy are not guaranteed [insured] against: (a) rights or claims of parties in possession not shown of record and questions of survey; (b) mechanics' liens where no notice thereof appears of record; (c) defects, liens or incumbrances created subsequent to the date hereof.

Refusal to Purchase.

3. This policy does not guarantee [insure] against loss or damage by reason of the refusal of any person to purchase, lease or lend money on the property, estate or interest described in schedule A.

TITLE 5: LANDS DIVISION
CONDITIONS

Notice of Actions

1. If any action or proceeding shall be begun or defense asserted which may result in an adverse judgment or decree resulting in a loss for which this Company is liable under this policy, notice in writing of such action or proceeding or defense shall be given by the Attorney General to this Company within 60 days after notice of such action or proceeding or defense has been received by the Attorney General; and upon failure to give such notice then all liability of this Company with respect to the defect, claim, lien or incumbrance asserted or enforced in such action or proceeding shall terminate. Failure to give notice, however, shall not prejudice the rights of the party guaranteed [insured], (1) if the party guaranteed shall not be a party to such action or proceeding, or (2) if such party, being a party of such action or proceeding be neither served with summons therein or have actual notice of such action or proceeding, or (3) if this Company shall not be prejudiced by failure of the Attorney General to give such notice.

Notice of Writs

2. In case knowledge shall come to the Attorney General of the issuance or service of any writ or execution, attachment or other process to enforce any judgement, order or decree adversely affecting the title, estate or interest guaranteed [insured] said party shall notify this Company thereof in writing within 60 days from the date of such knowledge; and upon a failure to do so, then all liability of this Company in consequence of such judgment, order or decree or matter thereby adjudicated shall terminate unless this Company shall not be prejudiced by reason of such failure to notify.

Defense of Claims

3. This company agrees, but only at the election and request of the Attorney General of the United States, to defend at its own cost and expense the title, estate or interest hereby guaranteed [insured] in all actions or other proceedings which are founded upon or in which it is asserted by way of defense, a defect, claim, lien or incumbrance against which this policy guarantees [insures], provided, however, that the request to defend is given within sufficient time to permit the company to answer or otherwise participate in the proceeding. If any action or proceeding shall be begun or defense be asserted in any action or proceeding affecting or relating to the title, estate or interest hereby guaranteed [insured] and the Attorney General elects to defend at the Government's expense, the Company shall upon request cooperate and

TITLE 5: LANDS DIVISION

render all reasonable assistance in the prosecution or defense of such proceeding and in prosecuting appeals.

If the Attorney General shall fail to request and permit the Company to defend, then all liability of the Company with respect to the defect, claim, lien or incumbrance asserted in such action or proceeding shall terminate; provided, however, that if the Attorney General shall give the Company timely notice of all proceedings and an opportunity to suggest such defenses and actions as it shall conceive should be taken and the Attorney General shall present the defenses and take the actions of which the Company shall advise him in writing, then the liability of the Company shall continue; but in any event the Company shall permit the Attorney General without cost or expense to use the information and facilities of the Company for all purposes which he thinks necessary or incidental to the defending of any such action or proceeding or any claim asserted by way of defense therein and to the prosecuting of an appeal.

Compromise of Adverse Claims

4. Any compromise, settlement or discharge by the United States or its duly authorized representative of an adverse claim, without the consent of this Company shall bar any claim against the Company hereunder. Provided, however, that the Attorney General may at his election submit to the issuing company for approval or disapproval any proposed compromise, settlement or discharge of any adverse claim and in the event of the consent of the issuing company to the proposed compromise, settlement or discharge it shall be liable for the payment of the full amount paid.

Statement of Loss

5. A statement in writing of any loss or damage sustained by the party guaranteed [insured], and for which it is claimed this Company is liable under this policy, shall be furnished by the Attorney General to this Company within 60 days after said party has notice of such loss or damage and no right of action shall accrue under this policy under 30 days after such statement shall have been furnished. No recovery shall be had under this policy unless suit be brought thereon within one year after said period of 30 days. Failure to furnish such settlement of loss or to bring such suit within the times specified shall not affect the Company's liability under this policy unless this Company has been prejudiced by reason of such failure to furnish a statement of loss or to bring such suit.

TITLE 5: LANDS DIVISION

Policy Reduced by Payments of Loss

6. All payments of loss under this policy shall reduce the amount of this policy pro tanto.

Lands Division
Form No. 41
Amended—June 12, 1943

PRELIMINARY OPINION

GENERAL FORM

DEPARTMENT OF JUSTICE, LANDS DIVISION, TITLE SECTION

From _____
Room _____

File _____

MY DEAR MR. SECRETARY: An examination has been made of the title data relating to _____ acres of land, more or less. Tract No. _____

_____ (Unit) (Project) in _____
County, _____

This land is to be acquired for a consideration of \$ _____^(State) by authority of (existing legislation)* _____

Your reference number is _____, and the file number of this Department is _____

(Certificate of title)

The land is described in the enclosed (draft-copy-of deed) (copy of option) dated _____, 19____ from _____

_____ to the United States of America.

(The certificate of title, No. _____, dated as of _____ 19____, was prepared by _____ and is satisfactory in form.)

(The abstract, consisting of _____ (items) (pages), was last satisfactorily certified on _____, 19____, by _____ (Abstracter).)

The (abstract) (certificate) and accompanying data disclose the title to be vested in _____

*The stenographer will insert in the body of the opinion the name of the Act checked. Title III of the Bankhead-Jones Farm Tenant Act (50 Stat. 522); the Weeks Forestry Act (36 Stat. 961), as amended.

TITLE 5: LANDS DIVISION

-----, subject to:

1. All taxes and assessments.
2. Rights or claims of persons in possession, if any, not shown of record.
3. Mechanics' liens, if any, not shown of record.
4. Easements for roads, highways and public utilities, if any, not shown of record.
5. Rights of the United States and third persons, if any, under reservations contained in the patent (shown at page ----- of the abstract) (referred to at item -----, Schedule B of the certificate).
6. Easements, if any, used by third persons in connection with vested and accrued water rights.
7. The lien of the assessments of the ----- District as shown at pages (item) ----- of the abstract (certificate) of title, which lie to be discharged by future annual installment payments.
8. Rights of the United States under the enclosed deed.

(According to the (option) (and) (administrative approval of your Department) the land is to be acquired subject to the (rights and) easements referred to in objections ----- above and the reservation by the vendor of the right to -----

----- which are therefore waived.)

When the above objections numbered ----- have been met,

and (the enclosed deed to the United States) (the enclosed draft of deed) (a general warranty deed from the above named owner(s) and spouse(s) if married), to the United States, (duly executed and) properly stamped, has been recorded, the purchase price has been

TITLE 5: LANDS DIVISION

under contract and grant of easement dated _____, 19____, filed for record on _____, and recorded among the land records of the county in (Book) (Volume) _____ of _____ at page _____. Your reference is No. _____ and the file number of this Department is _____.

The easement is described in the aforesaid contract and grant of easement, which recites a consideration of \$_____.

The abstract, consisting of _____ (items) (pages), was last satisfactorily certified on _____, 19____, by _____.

(The certificate of title) (The title insurance policy), No. _____, dated as of _____, 19____, was prepared by _____ and is satisfactory.

The (abstract) (certificate) (title insurance policy) recorded contract and grant of easement, and accompanying data disclose valid* title to be vested in the United States of America (subject to) _____

(easements for public roads, rights of way and utilities, if any, not shown of record) _____

(Your) (which your) Department has advised (that objections _____) will not interfere with the contemplated use of the land.

(It has been determined in accordance with the provisions of section 355 of the Revised Statutes, as amended, that the infirmities noted in objections numbered _____ will not jeopardize the interest of the United States.)

(It is to be noted that the purchase price for the easement has not been paid.)

The (abstract) (certificate of title) (title insurance policy), contract and grant of easement, and related papers are enclosed.

Sincerely yours,

Attorney General.

*Omit when title is approved subject to infirmities.

TITLE 5: LANDS DIVISION

Form No. 67

CLOSING STATEMENT

Seller..... Date of closing 194...
 Address or description of property:
 Sale price.....
 Address.....
 City..... State..... County..... State.....

Sale price..... * * * * *
 * * * * *
 * * * * *

Payment in full of principal of existing first mortgage }
 To..... } \$..... * * * * *
 Interest thereon from..... to..... } * * * * *

Payment in full of principal of existing second mortgage }
 To..... } * * * * *
 Interest thereof from..... to..... } * * * * *

Payment of other liens to..... * * * * *
 * * * * *
 * * * * *

Delinquent taxes for year..... paid to County.....
 Treasurer..... * * * * *
 Taxes..... * * * * *

Recording fees..... * * * * *
 Revenue stamps..... * * * * *
 Real estate sale commission..... * * * * *
 * * * * *
 * * * * *
 * * * * *

Balance due seller..... * * * * *
 Balance due United States of America..... * * * * *

Total..... \$..... \$.....

The above is a complete, true and correct account of funds received and disbursed by me in closing the sale of property described at the head of this Statement.

.....
 (Closing attorney)

I/We have examined the above Statement and find it correct. This acknowledges that \$..... has been disbursed as above with my/our approval and for my/our account and benefit, which said sum is the sale price set forth in my/our Option Agreement with the United States of America, and I/We acknowledge receipt of the balance due me/us as shown above.

.....
