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**Displacement,
Acquisition
and
Relocation**

Displacement, Acquisition and Relocation

For projects that involve acquisition, the potential displacement of persons, the need to relocate people (either permanently or temporarily) and the demolition or conversion of low and moderate income dwelling units, two important federal acts come into play: the Uniform Relocation Assistance and Real Property Policies Act of 1970 (URA) and Section 104(d) of the Housing and Community Development Act of 1974. Each of these acts places different obligations on grantees. Understanding how relocation requirements are triggered, how to meet the obligations, and what the costs are, as well as what alternative ways are available to develop a project that might minimize relocation costs, is important. A detailed description of the URA begins on this page. Section 104(d) is covered beginning on page 5-16.

The Uniform Relocation Act

The URA governs the processes and procedures which municipalities and agencies must follow in order to minimize the burden placed on low and moderate income tenants, property owners, and business' owners who must move, either temporarily or permanently, as the result of a project funded in whole or in part by Vermont Community Development Program (VCDP) funds, or other HUD-funded programs.

The URA applies to:

- 1) **Displacement** that results from acquisition, demolition, or rehabilitation for HUD-assisted projects carried out by public agencies, nonprofit organizations, private developers, or others.
- 2) **Real property acquisition** for HUD-assisted projects (whether publicly or privately undertaken).
- 3) **Creation of a permanent easement or right of way** for HUD-assisted projects (whether publicly or privately undertaken).
- 4) **Work on private property** during the construction of a HUD-assisted project even if the activity is temporary.

The Law

A. **Uniform Relocation Act.** Most of the policies and procedures are required by the Uniform Relocation Assistance and Real Property Acquisition policies Act of 1970 (42-USA 4601) and HUD Implementing Regulations at 49 CFR Part 24, as amended (URA), which covers all HUD-assisted projects and programs. These regulations apply to the acquisition of real property by any governmental agency for any activity assisted by this part, and to the displacement of any family, individual, business, nonprofit organization, or farm that results from such acquisition. The grantee's Certification of Compliance with the URA is required in the Grant Agreement as to 24 CFR part 570.606.

**Uniform
Relocation
Assistance And
Real Property
Policies Act Of
1970**

**Section 104(d) Of
The
Housing &
Community
Development Act
Of 1974**

**URA Impacts All
Aspects Of Your
Project, Not Just
The Activities
Funded
With VCDP Dollars**

The Law (continued)

URA establishes a uniform policy for the fair and equitable treatment of persons displaced as a result of Federally assisted programs. It establishes compensation levels for moving expenses and loss of tangible personal property as well as guidelines for provision of temporary or permanent replacement housing.

B. **Section 104(d)**. This governs development of an Anti-displacement Plan for minimizing the effects of displacement of any low or moderate income person as a direct result of demolition of any housing unit or the conversion of occupied or vacant occupiable low/moderate income housing to a use other than low/moderate income housing for VCDP or other HUD programs. Each grantee receiving funds for all activities other than a Planning Grant must develop and follow such a plan prior to submitting a grant application.

Sanctions for Nonperformance

If the grantee does not meet all of the requirements of the law, it will be required to take corrective action to bring its actions into compliance with the law. If the Secretary of HUD issues a finding of noncompliance, then payments to the grantee may be terminated; or, reduced; or, limit availability of other HUD funds to the grantee; or, refer the case to the United States Attorney General for civil action. Noncompliance can result in very costly sanctions and remediation requirements. It is in the best interest of everyone involved to carry out the project activities correctly from the beginning.

A Few Terms Defined

Many terms are used in a specific sense in the Uniform Relocation Act. More detailed definitions appear in Handbook 1378. Brief definitions of some of those terms appear here.

Agency The entity that causes a person to become a displaced person. Such an entity may be the State, a State agency (which includes a local government), or a person (which includes a nonprofit organization, partnership, corporation, or association).

Business Any lawful activity, except a farm operation, that is conducted:

- 1) primarily for the purchase, sale, lease and/or rental of personal and/or real property, and/or for the manufacturing, processing, and/or marketing of products, commodities and/or any other personal property;
- 2) primarily for the sale of services to the public;

- 3) primarily for outdoor advertising display purposes, when the display must be moved as a result of the project.

Comparable Replacement Dwelling A dwelling which is:

- 1) decent, safe, sanitary;
- 2) functionally equivalent to the displaced dwelling;
- 3) in an area not subject to adverse environmental conditions;
- 4) in a location generally not less desirable than the location of the displacement dwelling;
- 5) on a site that is typical in size for residential development with normal site improvements;
- 6) currently available to the displaced person; within the financial means of the displaced person.

Decent, Safe & Sanitary Dwelling A dwelling which is:

- 1) structurally sound;
- 2) contains a safe electrical system;
- 3) contains a safe and adequate heating system;
- 4) is adequate in size to a family/household's needs;
- 5) contains unobstructed egress to safe, open space at ground level;
- 6) for a person with mobility impairment, meets standards set by the American National Standards Institute and the Uniform Federal Accessibility Standards;
- 7) complies with 24 CFR Part 35 lead-based paint requirements.

Displaced Person Any person who moves himself or his personal property permanently as a direct result of:

- 1) the acquisition or notice of acquisition of property;
- 2) rehabilitation or demolition of property;
- 3) the rehabilitation, acquisition, or demolition of property on which the person's business or farm operation is located.

Dwelling The place of permanent, customary and usual residence of a person.

Grantee In a State CDBG program such as Vermont's the State is considered the grantee.

A municipality is also referred to as a grantee by the Vermont State Program.

Lower Income Person This has the same meaning as "low and moderate income person," that is a household which has an income equal to or less than the Section 8 low-income limit established by HUD, usually 80% of the median income for the area, adjusted for family size.

Person (Displaced) Here the term actually means household, business, nonprofit organization, or farm, that is, any entity with personal property on the site.

Tenant Any person who has temporary use and occupancy of real property owned by another.

Displacement

As a general philosophy, HUD-assisted (VCDP) activities should take reasonable steps to minimize displacement. This means:

- Considering whether or not displacement will occur as part of funding decisions and project feasibility determinations.
- Assuring, whenever possible, that occupants of buildings to be rehabilitated are offered an opportunity to return.
- Planning rehabilitation projects in "stages" to minimize displacement
- Meeting all HUD notification requirements so that affected persons do not move because they have not been informed about project plans and their rights. Failing to adequately notify these persons early in the process can be a costly mistake.

Displacement occurs when a person (or their property) is displaced as a **direct result** of federally assisted acquisition, demolition, conversion or rehabilitation. A person is displaced if **they move** because the person is:

- required to move; or
- not offered a decent, safe, sanitary and affordable unit in the project; or
- treated "unreasonably" as part of a permanent or temporary move;

A person may also be considered displaced if the necessary notices are not given or provided in a timely manner and the person moves for **any** reason.

The following persons are **not** considered displaced:

- Those evicted for cause, BUT not if the eviction is taken to avoid paying relocation assistance;
- Those that have no legal right to occupy the property (e.g., squatters);
- Those that have occupied the property for the purpose of obtaining relocation benefits;
- Those that receive written notice, before leasing and occupying the property, of the possibility that displacement or an increase in rent may occur and that relocation assistance will not be provided;
- Those that retain the right and use of the property following acquisition (life estate); or
- Those that, after being fully advised of their rights, waive them.

For Notification Requirements, See HUD Handbook 1378

Displacement Occurs When A Person Or Property Is Displaced As A Result Of Federally-Assisted Acquisitions, Demolition, Conversion Or Rehabilitation

HUD Has Specific Requirements For Waivers - See HUD Handbook 1378

Economic Displacement

A person can also be economically displaced. For example, if a family's rent increases as a result of a federally assisted activity, and the rent is more than the family can afford, the family is "rent burdened." Rent burdened families are eligible to receive financial benefits which can be quite hefty. These include payments to cover the difference between the old rent and the new rent for 42 months. Tenants who are intended to remain in the project must receive the offer of a "suitable" unit which can be rented at an "affordable" price. Tenants who move permanently after execution of the Grant Agreement because they did not receive such an offer are considered "economically displaced."

If there is **no increase in the rent** the unit is considered affordable and the tenant is not considered "rent burdened" -- even if the percentage of income that the family is paying is quite high.

If the **rent is increased** as a result of federal assistance, it may not exceed:

- **For lower-income tenants (<80% median income)**, Total Tenant Payment (TTP) as calculated for the Section 8 Certificate Program. In Vermont TTP is the greater of 30% of the tenant's adjusted monthly income, 10% of the tenant's gross monthly income, or the ANFC as-paid amount.
- **For tenants who are not lower income (>80% of median income)**, 30% of gross monthly household income.

Persons whose increased rent exceeds this threshold are "rent burdened." If these persons move permanently from the project as a result, they are considered "economically displaced."

**Economic
Displacement
Must Be Avoided
As Well**

Acquisition

When you assembled your grant proposal, you began to address the issues involved in acquiring a property with the assistance of VCDP funds. In addition, if your project involves acquiring permanent easements or rights of way; or, if it will require work on private property not otherwise a part of the project, you researched what impact, if any, that had on people or businesses located on that property. The grant proposal included evidence of some form of site control such as an option or purchase and sales agreement and, if appropriate, permission from a property owner(s) whose property would be impacted by the project. You also included in your proposal budget costs for staffing to work on the issues involved. Now you are ready to begin the work which will allow you to take title of the property and begin the project.

Any property purchased or otherwise impacted by a project funded with VCDP grant funds is subject to both federal regulations and VCDP procedures concerning acquisition, record keeping, inventory control and disposition. The acquisition of real property, land and buildings, including machinery or equipment which is permanently affixed to the structure; the purchase of easements or rights of ways; and any activity involving work on private property, all require you to implement your project carefully and in full compliance with the URA.

You will probably find it necessary to assign responsibility for acquisition activities to qualified consultants (including legal) who have adequate knowledge of the URA and its amendments. Now that you have established record keeping procedures according to Chapter 4, be sure all pertinent documents are secured and properly filed.

At the time you decided to acquire a piece of real property and triggered the URA, you should have already informed the property owner of your intent and provided notification of his or her legal rights under the Act. ***If the property is part of a planned or designated project area, or if your project requires a specific site, the sale cannot be considered voluntary.***

Any acquisition by an entity with the power of eminent domain is considered clearly voluntary when the owner is notified in writing that the power of eminent domain shall not be enforced. The notice must be sent prior to execution of a sales contract. It must contain the fair market value of the property and advise the owner that he or she may withdraw from the purchase agreement after receiving the notice.

Before you presented your Grant Application, you had at least one appraisal of the property and included it with your application. Now you should commission a title search prior to closing on the acquisition. Based on the appraisal and title search, you can finalize the terms and conditions of a written purchase order to the owners. In the cases where you and the owner cannot reach a mutually agreed upon price, and you have chosen the negotiation process to acquire, you may have to abandon the project or find another way to accomplish your goals.

**Acquisition
Of All Property
Requires
Complete
Compliance
With The URA**

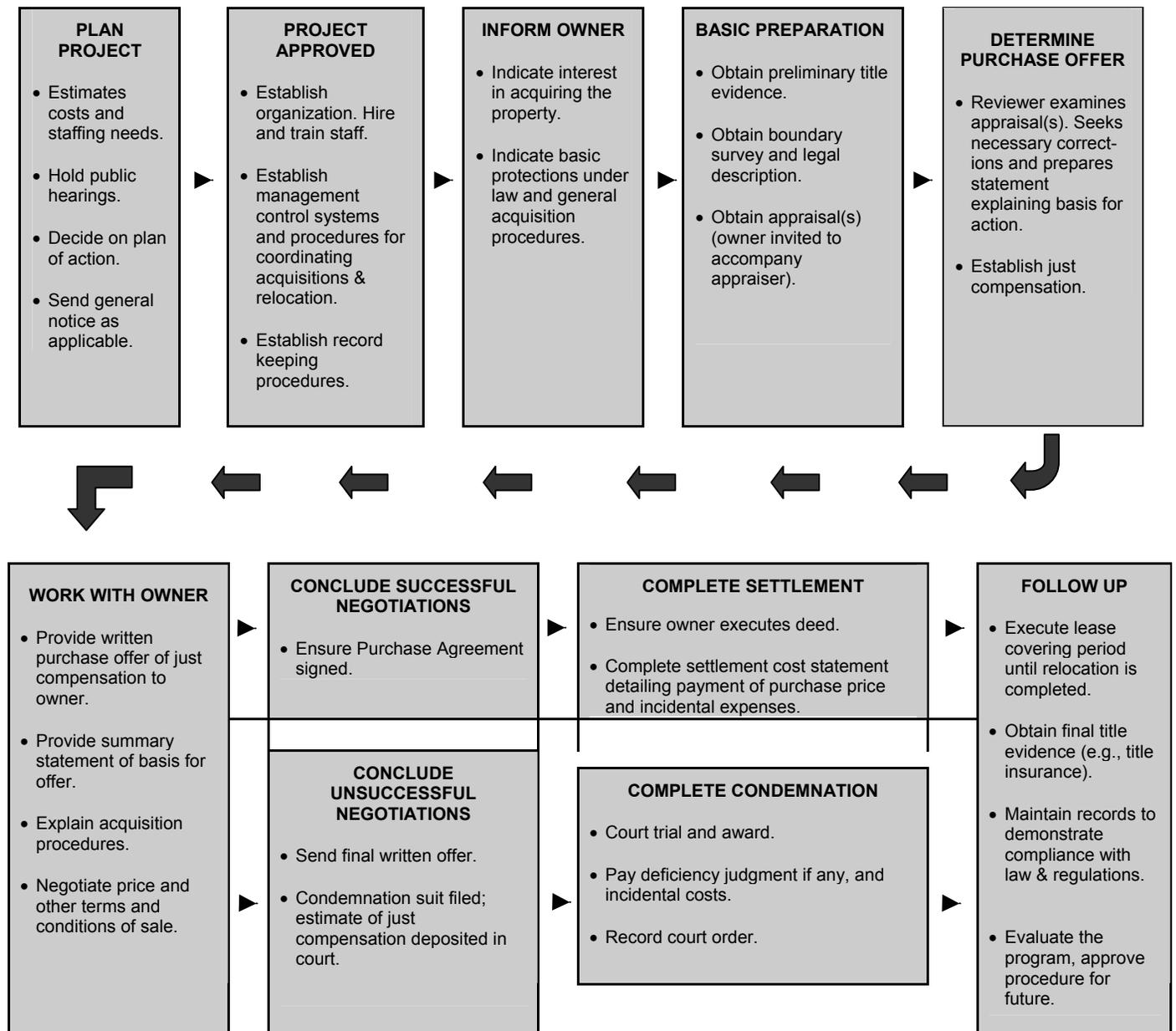
**Voluntary
Acquisition
Notification
Requirements**

Any property, including real property, purchased in whole or in part with VCDP funds must be insured with appropriate insurance coverage such as theft, fire, vandalism, liability, etc.

If acquisition of property will result in the relocation of people or businesses, including farms and nonprofit organizations, see the next section.

See Typical Acquisition Process Flow Chart on the next page.

TYPICAL ACQUISITION PROCESS UNDER THE UNIFORM ACT



Relocation

As stated at the beginning of this chapter, planning should begin during the development phase of your project in order to minimize or prevent displacement. The results of this planning will assist you in developing and implementing an Anti-Displacement Plan as required by Section 104(d) of the Housing and Community Development Act of 1974. The Plan outlines the actions your community will take, through the actions of the municipality and the project developer, to prevent displacement by the program activities in your grant.

The process for meeting the requirements of both Section 104(d) and the URA actually began when you submitted your Letter of Intent and began writing your grant application. Your Letter of Intent served as official notice of intent to access CDBG funds, and it is at that time that any affected party's rights began. As part of the application process you completed Form O which determined if, and to what extent, your project triggers compliance with URA. You should also have already requested and received **HUD Handbook 1378 (Tenant Assistance, Relocation, and Real Property Acquisition)**, which will provide specific guidance on achieving compliance.

In addition, if you applied for and received an implementation grant you submitted an Anti-Displacement Plan. At this time, you should make sure that your adopted plan is still current for the project you are undertaking. If it is not, this is the time to update it.

You may also have provided the first "general information notice" to both affected and unaffected persons. ***It is now time to get in touch with VCDP Grants Management staff for assistance in identifying and distributing all additional notices as required and provided in Handbook 1378.*** The notices will have to be filled out for your project so that they conform to its unique aspects. Different notices serve different purposes and must be tailored to the specific project circumstances and the individual circumstances of the residents. Notices must be either hand delivered, signed by the tenant and a copy retained by the Grantee, or sent certified mail, return receipt requested.

Temporary Relocation

Residents may be required to move temporarily during the rehabilitation. The temporary dwelling must be suitable and decent, safe and sanitary -- but not necessarily comparable. All other conditions regarding the temporary move must be reasonable. In addition to notice requirements, the tenant must at a minimum receive:

- Reasonable advance written notice of the date and approximate duration of the planned temporary move.
- Information about the terms and conditions under which the tenant will be returning to the unit when the project is completed.

**If You Don't
Already Have A
Copy Of HUD
Handbook 1378,
Call Your VCDP
Coordinator**

**Update Your Anti-
Displacement Plan
As Needed**

**It Is Important
That All Notice
Requirements Are
Met - Otherwise
Your Project Is
Not In Compliance
With
The URA**

- Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary move. The resident must continue to pay their current rent, including utilities, and will be reimbursed for any increase in monthly rent/utility costs. Grantee should be sure to prepare adequate documentation when determining an amount.

Permanent Moves To a Different Unit Within the Same Project

Tenants may remain in the project but not necessarily in the same unit. Permanent moves within the project must be to suitable, decent, safe and sanitary -- but not necessarily comparable -- units. In addition to a Notice of Nondisplacement, the resident must at a minimum receive:

- Reasonable advance written notice of the planned move to an alternate unit.
- Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move.

The rent plus utilities of the permanent new unit within the project must not exceed **the** greater of the tenant's old rent plus utilities or Total Tenant Payment (for tenants with incomes $\leq 80\%$) or 30% of Gross Monthly Income (for tenants with income $>80\%$).

IMPORTANT

If you are undertaking a project which will result in the permanent or temporary displacement of people or businesses, including farms and nonprofit organizations, you should already be dealing with the relocation issues including how to fund the relocation plan. Remember, as you work with this complex set of regulations and requirements, that the municipality, as the Grantee, will ultimately be held responsible for any failure to follow the procedures correctly. This failure may result in HUD or State action. Non-compliance can result in a costly situation. It is in the best interest of everyone involved to carry out these activities correctly from the beginning.

We recommend you keep in regular contact with Department staff during the application process and at start-up and follow the steps outlined in **HUD Handbook 1378**. Make sure that you know all the steps to be taken to carry out your relocation activities and that you have copies of all the letters and forms you will need to insure successful compliance with the requirements of the Uniform Act.

**Alternative Units,
Not Necessarily
Comparable**

**Grantee Has
Ultimate
Responsibility To
Ensure Full
Compliance**

Developing a Plan to Minimize or Prevent Displacement

In all cases where relocation results from the expenditures of federal funds, the URA applies, even if the federal funds are not paying for the specific activity that causes the displacement. To ensure that all requirements of the URA are met, you will have begun to implement the following steps:

- Develop a concrete plan to meet the relocation needs of affected persons, such as housing occupants of residential housing, or commercial properties (this will involve a survey of those who may potentially be relocated), and determine the amount of funds needed to serve all persons. You may have to hire additional staff and hold public hearings.
- When you hire your relocation staff, make sure they are qualified to handle all aspects of URA requirements. Their first task will be contact your CD Regional Coordinator and Grants Management staff to make sure all requirements are being met. Then the relocation staff will begin by contacting all affected parties, both businesses and residents, and assess their relocation needs as well as giving them written notice of the potential relocation. At the same time, the persons to be displaced must be given written materials describing the payments, services and legal protections they are entitled to as a result of the displacement. Persons to be displaced should receive information related to the cost and location of comparable housing, if feasible.
- The relocation staff will be expected to work with and counsel residents and businesses to be displaced until they are located in suitable (decent, safe and sanitary) replacement quarters and their claims for moving have been accepted and paid. Follow-up procedures are recommended to ensure that the relocation plan has been successful and to improve future relocation activities in which you may be involved.

The following issues should be considered when developing your plan to minimize or prevent displacement resulting from your grant program:

- 1) Conduct rehabilitation activities so as to allow tenants to remain during and after rehabilitation, **or**;

Conduct the rehabilitation efforts so that empty buildings or units can be rehabilitated first and then allow tenants to move into rehabilitated units before rehabilitation commences on occupied units.
- 2) Establish temporary relocation facilities in order to house families whose displacement will be of short duration so that they can move back to their neighborhood after rehab or new construction.
- 3) Use other public funds, or VCDP grant funds, to pay moving costs and provide relocation payments, or require private developers to provide compensation to persons displaced by development activities.

**Uniform Act
Applies Even If
The Federal Funds
Are Not
Paying For A
Specific Element**

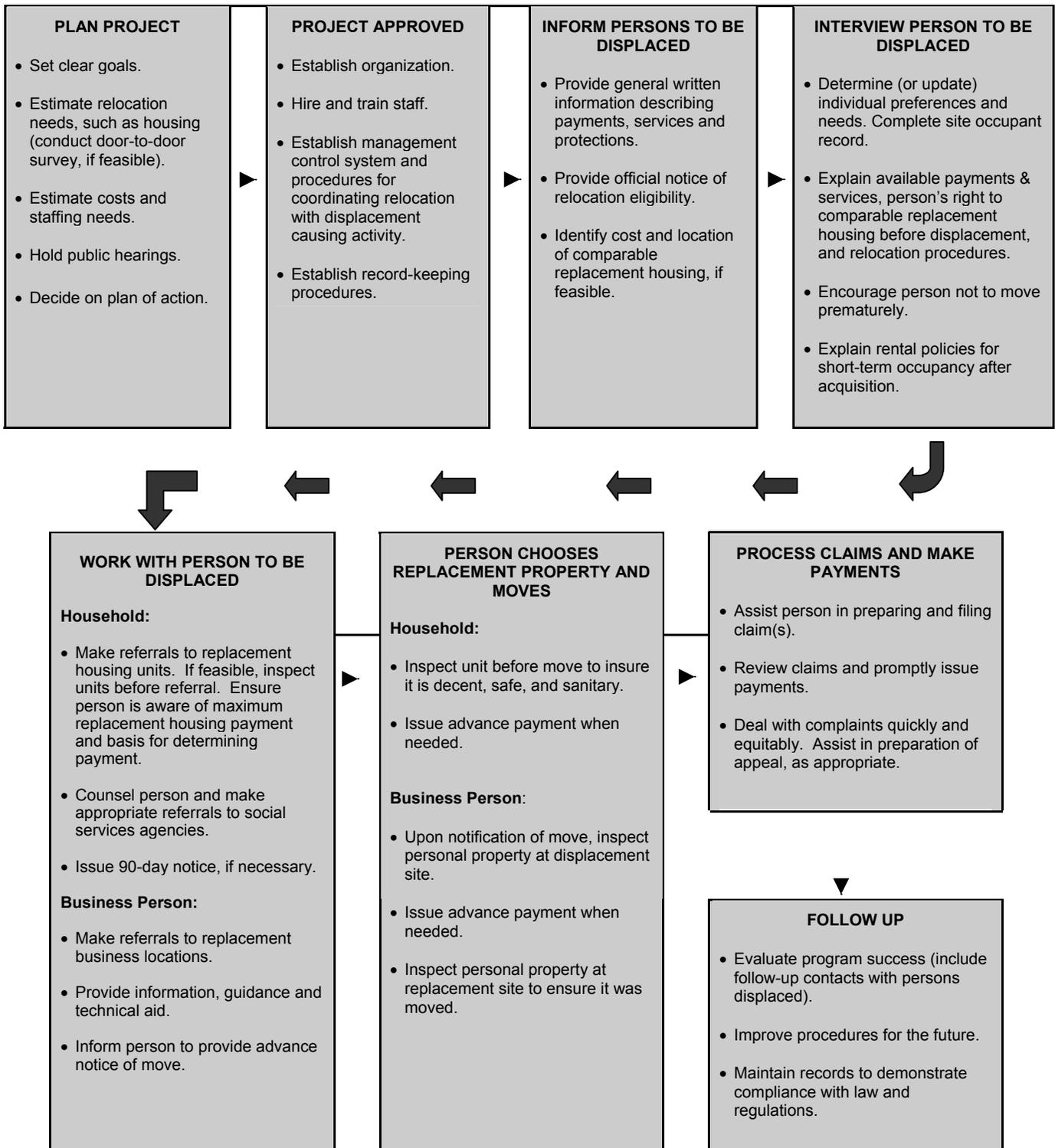
**Rights Of Persons
Being Displaced
Include Being
Notified In Writing**

**Issues To
Consider When
Developing
A Plan**

- 4) Give displaced persons priority in obtaining subsidized housing units.
- 5) Provide counseling and referral services to assist displaced persons in finding alternate housing in the neighborhood.
 - Work with area landlords and real estate brokers to locate available units for households facing displacement.
- 6) Target existing Section 8 Program Certificates to households being displaced, and recruit area landlords to participate in the program.
- 7) Establish a program of grants or deferred loans for rehab or repairs which is available to property owners who agree to limit rent increases for five to 10 years.
- 8) Adopt policies which help to ensure certain rights for tenants faced with condominium or cooperative conversions of their rental units.
- 9) Use local media, serving the affected neighborhoods, to inform the residents of those neighborhoods, that specific programs exist to assist households facing displacement.
- 10) (Economic Development) Indicate the extent that displaced businesses and low and moderate income residents and minorities will be given the opportunity to relocate to the project area upon completion of the project.
- 11) (Economic Development) Indicate the extent that displaced persons will be given the opportunity to relocate outside of the low-income and minority concentration area.
- 12) (Economic Development) Indicate the extent of the provision of relocation advisory services.

See Typical Relocation Process Flow Chart on the next page.

TYPICAL RELOCATION PROCESS UNDER THE UNIFORM ACT



Section 104(d)

There are two distinct components to Section 104(d) of the Housing and Community Development Act of 1974 (also known as the Barney-Frank amendment). One deals with low income displaced persons, similar to the URA. Any person who qualifies for 104(d) assistance is covered by the URA. The URA also covers non-low income persons.

The other component relates to units. Grantees may not use VCDP dollars to reduce the supply of “low/moderate dwelling units.” This is a bricks and mortar requirement; it is not related to the circumstances of the family who lives in the unit, nor whether the unit is currently owned or rented.

Section 104(d) requires that all “occupied” and “vacant occupiable” low/moderate-income housing units that are demolished or converted to another use or higher income housing must be replaced with other low/moderate-income units. In most cases where the demolition or conversion of occupied or available (vacant, but occupiable) low and moderate income housing occurs, you must replace such housing on a one-for-one basis within three years. This must be done in addition to the relocation actions triggered by the demolition or conversion. Keep in mind that conversion can also include a reduction in the number of bedrooms even if the number of units remains the same and continues in use as affordable housing. No additional VCDP grant funds will be available to cover these replacement expenses unless budgeted for and funded in the original project.

Other Terms Defined

Low/Moderate Dwelling Unit

A rental unit that has a market rent including estimated tenant-paid income utilities that is equal to or below the Section 8 Fair Market Rent (*Section 8 Fair Market Rent* is determined and published by HUD by bedroom size and for individual market area -- a list is available from your CD Coordinator).

- The determination of a lower income unit is **not** based upon the income of the occupant.
- A unit with a rent above the Fair Market Rent that is occupied by a low-income tenant is **not** a low/moderate income unit.
- A unit with a rent below the Fair Market Rent that is occupied by a high-income tenant **is** a low/moderate income unit.

Demolish

To tear down a unit.

The Barney-Frank Amendment

One-For-One Replacement Is A Bricks And Mortar Requirement

Replacing The Number Of Bedrooms Lost Is IMPORTANT

Conversion To change a housing unit to a non-housing unit, to increase the rent on a lower income rent above the Fair Market Rent, to change a housing unit to an emergency shelter.

Triggers for One-for-One Replacement

Grantees **must replace a unit if:**

- It meets the definition of low/moderate dwelling unit; AND
- It is occupied or is vacant and occupiable; AND
- It is to be demolished or converted to a unit with rents above the Fair Market Rent or to a use that is no longer permanent housing.

A unit **does not need to be replaced if:**

- It does not meet ALL of the triggers above
- It is substandard and not suitable for rehabilitation and has been vacant for more than 3 months.

Income of current residents is not a trigger for replacement.

Replacement units **must** be:

- Within the grantees jurisdiction;
- In standard condition;
- Affordable for low-income families for at least 10 years.

The number of bedrooms replaced must equal the number of bedrooms removed. Replaced bedrooms do not need to be in the same unit configuration (2 one-bedroom units can be replaced with 1 two-bedroom unit). Replacement units must be developed within four years of demolition/conversion.

Exceptions to the one-for-one replacement can be waived by HUD under certain circumstances.

For a detailed explanation of the one-for-one replacement requirements please refer to Handbook 1378 and consult with VCDP staff.

See Section 104(d) Flow Chart on the next page.

Is 104(D) TRIGGERED?

Is it a low/moderate-income unit? i.e. rent = Fair Market Rent

NO

-

Section 104 is not triggered

YES

-

Is the unit demolished or converted?

NO

-

Section 104 is not triggered

YES

-

Are VCDP Funds being used?

NO

-

Section 104 is not triggered

YES

-

Is the household income less than 80% of median?

NO

-

Section 104 is not triggered

YES

-

Section 104 is triggered