

Section 7.4

FEES AND COSTS

TABLE OF CONTENTS

PURPOSE.....	7-4-1
AUTHORITY	7-4-1
REFERENCES.....	7-4-1
SCOPE.....	7-4-1
7.4.1 Reimbursement of Fees and Costs	7-4-1
7.4.2 Expert Costs	7-4-2
7.4.3 Attorney Fees	7-4-3
7.4.4 Supplemental Purchase Agreements	7-4-4
TRAINING	7-4-4
FORMS	7-4-4

Section 7.4

FEES AND COSTS

PURPOSE

This section explains the requirements for reimbursement of property owner and business owner fees and costs.

AUTHORITY

Section 20.23(3)(a), Florida Statutes
Section 334.048(3), Florida Statutes

REFERENCES

Section 7.2, Negotiation Process
Section 73.091, Florida Statutes
Section 73.092, Florida Statutes

SCOPE

This section will be used by District and Central Offices of Right of Way and District and Central Offices of the General Counsel.

7.4.1 Reimbursement of Fees and Costs

7.4.1.1 The Florida Department of Transportation (Department) shall reimburse property owner's and business owner's reasonable attorney's fees and expert costs incurred as a result of the Department's acquisition of their property and/or settlement of their eligible business damage claims. For parcels and business damage claims settled prior to a jury verdict, reasonable fees and costs typically include costs for one real estate appraisal per parcel, one business damage estimate per eligible business, attorney's fees, and other necessary expert costs. For parcels where final compensation for land and/or business damages is determined by jury verdict, fees and cost shall be reimbursed in accordance with **Section 73.091** and **Section 73.092, Florida Statutes**.

7.4.1.2 The District Right of Way Manager shall determine reasonable amounts for fees and costs to be reimbursed. In determining reasonable fees and costs, the District Right

of Way Manager shall be guided by the fees and costs the owner would be expected to pay if the Department were not responsible for reimbursement.

7.4.1.3 The District Right of Way Manager shall not enter into discussion, negotiation or agreement with property owner counsel or experts concerning specific amounts to be reimbursed for attorney fees or expert costs for any parcel prior to initiation of negotiations for that parcel without the prior written approval of the Director, Office of Right of Way and the Department's General Counsel.

7.4.1.4 The Department should pay fees and costs for parcels acquired through negotiated settlement at closing. For parcels acquired by eminent domain, fees and costs should be paid at the time the final judgment for land and/or business damages is entered. Circumstances may arise which make it advisable to defer payment of fees and costs. The District Right of Way Manager must approve any deferral of payment. The Department may pay fees and costs directly to the property or business owner or the owner may request in writing that fees and costs be paid directly to the attorney and/or other experts.

7.4.1.5 Where a binding offer is withdrawn pursuant to **Section 7.2, Negotiation Process**, and no new offer will be delivered or a new offer will not be delivered for an extended period of time, the Department shall pay reasonable attorney's fees and expert costs, as described in **Section 7.4.1.1**, incurred by the property owner and business owner resulting from the previously delivered binding offer and its withdrawal.

7.4.2 Expert Costs

7.4.2.1 Reimbursement of appraisal, certified public accountant, business damage expert, and other expert costs should be based on an invoice which includes:

- (A) The nature of services performed listed by date;
- (B) The time expended for each date of service identified in (A) above;
- (C) The total fee, and
- (D) The hourly rate for services.

7.4.2.2 It is recommended that the District receive all work produced before reimbursement of costs. The quality and completeness of the work received by the Department must be considered in determining a reasonable amount to be reimbursed.

7.4.2.3 Invoices or other documentation supporting the amounts reimbursed for expert costs shall be maintained in the official parcel file.

7.4.3 Attorney Fees

7.4.3.1 Property owner and business owner attorney's fees for parcels and business damage claims settled prior to a jury verdict should be negotiated considering:

- (A) The benefit and fee schedule as described in **Section 7.4.3.3** and **7.4.3.4**;
- (B) Reasonable hours and hourly rates;
- (C) The complexity of the parcel/business damage claim;
- (D) The level of effort put forth by the attorney in negotiating settlement of the parcel/business damage claim; and
- (E) Other issues the district deems pertinent to the negotiations.

7.4.3.2 For parcels where final compensation for land and/or business damages is determined by jury verdict, attorney's fees shall be reimbursed in accordance with **Sections 73.091** and **73.092, Florida Statutes**.

7.4.3.3 Attorney fees based on benefit, shall be calculated as follows:

- (A) Thirty-three percent (33%) of any benefit up to \$250,000, plus
- (B) Twenty-five percent (25%) of any benefit between \$250,000 and \$1,000,000, plus
- (C) Twenty percent (20%) of any portion of the benefit exceeding \$1,000,000.

7.4.3.4 For real estate acquisition, the term benefit means the difference between the settlement and the last written offer made by the Department before the owner hires an attorney. If a written offer is not made before the owner hires an attorney, the benefit will be measured from the first written offer after the attorney is hired. A non-monetary benefit obtained by the property owner's attorney for his client may also be considered to the extent such non-monetary benefit can be quantified with a reasonable degree of certainty. For business damages, benefit will be calculated as the difference between the final judgment or business damage settlement amount and the amount of the Department's initial counteroffer to the business owner's offer.

7.4.3.5 Documentation explaining the amount to be reimbursed for attorney's fees shall be maintained in the official parcel file.

7.4.4 Supplemental Purchase Agreements

If the real estate/business damage closing must take place prior to agreement on the amount of reasonable fees and costs, payment of fees and costs may be processed separately by means of a Supplemental Purchase Agreement executed by the property or business owner. Supplemental Purchase Agreements shall be prepared using **Form No. 575-030-07, Purchase Agreement**. Final agency acceptance is not required for supplemental purchase agreements for payment of fees and costs.

TRAINING

Training for this section is provided to all participants in Right of Way Fundamentals, a required element of the Right of Way Training Program.

FORM

The following form is available on the Infonet and the Internet:

575-030-07, Purchase Agreement