§ 71.01 Acquisition of real property.

(a) The head of each office of the department, as defined in section 5.03 of this chapter, when an appropriation therefor has been made by the legislature, may acquire, for and on behalf of the health and mental hygiene facilities improvement corporation, any real property which he may deem necessary for the purpose of a state institution, or for that office or division of the department of which he is the head, by purchase or pursuant to the eminent domain procedure law, the title to which shall be taken in the name of and be vested in the people of the state of New York; provided, however, that no real property shall be so acquired by purchase unless the title thereto shall be approved by the attorney general.

(b) Whenever real property is to be acquired pursuant to the eminent domain procedure law, the commissioner of mental hygiene shall cause to be made by the office of general services an accurate acquisition map. With respect to any real property or any easement to be so acquired for mental hygiene purposes, the commissioner of mental hygiene may cause the map, contemplated by this subdivision, and any changes, alterations or modifications in such map and description contemplated by subdivision (e) of this section, to be made by the office of general services or, with the approval of the director of the budget, by a licensed professional engineer or a licensed land surveyor, and the commissioner of general services and the commissioner of mental hygiene may each authorize the health and mental hygiene facilities improvement corporation to act as agent in making such map.

(c) Whenever real property is to be acquired pursuant to the eminent domain procedure law, the commissioner of mental hygiene shall cause an accurate map to be made by the state department of transportation. With respect to any real property or any easement to be so acquired for mental hygiene purposes, the commissioner of mental hygiene may cause the map, contemplated by this subdivision, and any changes, alterations or modifications in such map and description contemplated by subdivision (e) of this section, to be made by the state department of transportation or, with the approval of the director of the budget, by a licensed professional engineer or a licensed land surveyor, and the state commissioner of transportation and the commissioner of mental hygiene may each authorize the mental hygiene facilities improvement

fund to act as agent in making such map.

(d) On the approval of such map by the commissioner, the original tracing of such map shall be filed in the main office of the department pursuant to the provisions of the eminent domain procedure law.

(e) If the commissioner shall determine, prior to the filing of such map, in the office of the clerk or register of the county, that changes, alterations or modifications of such map as filed in the main office of the department should be made, he or she shall, subject to the provisions of article two of the eminent domain procedure law, if applicable, direct the preparation by the department of transportation of an amended map. On the approval of such amended map by the commissioner, it shall be filed in the main office of the department and the amended map shall thereupon in all respects and for all purposes supersede the map previously filed.

(f) If the commissioner shall determine prior to the filing of a copy of such acquisition map in the office of the county clerk or register as provided in section four hundred two of the eminent domain procedure law, that such map should be withdrawn, he or she may file a certificate of withdrawal in the offices of the department and of the department of law. Upon the filing of such certificate of withdrawal, the map to which it refers shall be cancelled and all rights thereunder shall cease and determine.

(g) The commissioner of mental hygiene shall deliver to the attorney general a copy of such acquisition map, whereupon it shall be the duty of the attorney general to advise and certify to the commissioner of mental hygiene the names of the owners of the property, easements, interests or rights described in the said acquisition map, including the owners of any right, title or interest therein, pursuant to the requirements of section four hundred three of the eminent domain procedure law.

(h) If, at or after the vesting of title to such property in the people of the state of New York as provided for in the eminent domain procedure law, the commissioner of mental hygiene shall deem it necessary to cause the removal of an owner or occupant from any real property so acquired, he may cause such owner or occupant to be removed therefrom by proceeding in accordance with section four hundred five of the eminent domain procedure law. The proceeding shall be brought in

the name of the commissioner of mental hygiene as agent of the state and the attorney general shall represent the petitioner in the proceedings. No execution shall issue for costs, if any, awarded against the state or the commissioner of mental hygiene, but they shall be part of the costs of the acquisition of the real property and be paid in like manner. Proceedings may be brought separately against one or more of the owners or occupants of any such property, or one proceeding may be brought against all or several of the owners or occupants of any or all such property within the territorial jurisdiction of the same court, justice or judge; judgment shall be made for immediate removal of persons defaulting in appearance or in answering, or withdrawing their answers, if any, without awaiting the trial or decision of issues raised by contestants, if any.

(i) Upon making any agreement provided for in section three hundred four of the eminent domain procedure law, the commissioner of mental hygiene shall deliver to the comptroller such agreement and a certificate stating the amount due such owner or owners thereunder on account of such appropriation of his or their property and the amounts so fixed shall be paid out of the state treasury after audit by the comptroller from moneys appropriated for the acquisition of such real property, but not until there shall have been filed with the comptroller a certificate of the attorney general showing the person or persons claiming the amount so agreed upon to be legally entitled thereto.

(j) Application for reimbursement of incidental expenses as provided in section seven hundred two of the eminent domain procedure law shall be made to the commissioner upon forms prescribed by him and shall be accompanied by such information and evidence as the commissioner may require. Upon approval of such application, the commissioner shall deliver a copy thereof to the comptroller together with a certificate stating the amount due thereof, and the amount so fixed shall be paid out of the state treasury after audit by the comptroller from monies appropriated for the acquisition of property under this section.

(k) The commissioner, with the approval of the director of the budget, shall establish and may amend rules and regulations authorizing the payment of actual reasonable and necessary moving expenses of occupants of property acquired pursuant to this section or in hardship cases for the advance payment of reasonable and necessary moving expenses. Such

rules and regulations may further define the terms used in this subdivision. In lieu of such actual reasonable and necessary moving expenses, any such displaced owner or tenant of residential property may elect to accept a moving expense allowance, plus a dislocation allowance, determined in accordance with a schedule prepared by the commissioner and made a part of such rules and regulations. In lieu of such actual reasonable and necessary moving expenses, any such displaced owner or tenant of commercial property who relocates or discontinues his business or farm operation may elect to accept a fixed relocation payment in an amount equal to the average annual net earnings of the business or farm operation, or five thousand dollars, whichever is the lesser. In the case of a business, no such fixed relocation payment shall be made unless the commissioner finds and determines that the business cannot be relocated without a substantial loss of its existing patronage, and that the business is not part of a commercial enterprise having at least one other establishment, which is not being acquired by the state or the United States, which is engaged in the same or similar business. Application for payment under this subdivision shall be made to the commissioner upon forms prescribed by him and shall be accompanied by such information and evidence as the commissioner may require. Upon approval of such application, the commissioner shall deliver a copy thereof to the comptroller together with a certificate stating the amount due thereunder, and the amount so fixed shall be paid out of the state treasury after audit by the comptroller from moneys appropriated for the acquisition of property under this section. As used in this subdivision "commercial property" shall include property owned by an individual, family, business concern (including the operation of a farm) and a non-profit organization.

(l) Authorization is hereby given to the commissioner to make supplemental relocation payments, separately computed and stated, to displaced owners and tenants of residential property acquired pursuant to this section who are entitled thereto, as determined by him. The commissioner, with the approval of the director of the budget, may establish and amend rules and regulations providing for such supplemental relocation payments. Such rules and regulations may further define the terms used in this subdivision. In the case of property acquired pursuant to this section which is improved by a single,

two-family or three-family dwelling actually owned and occupied by the owner for not less than one year immediately prior to the initiation of negotiations for the acquisition of such property, such payment to such owner shall not exceed five thousand dollars. Such payment shall be the amount, if any, which, when added to the acquisition payment equals the average price, established by the commissioner on a class, group or individual basis, required to obtain a comparable replacement dwelling that is decent, safe and sanitary to accommodate the displaced owner. Such payment shall be made only to a displaced owner who purchases and occupies a dwelling within one year subsequent to the date on which he is required to move from the dwelling acquired pursuant to this section, except advance payment of such amount may be made in hardship cases. In the case of property acquired pursuant to this section from which an individual or family, not otherwise eligible to receive a payment pursuant to other provisions of this subdivision, is displaced from any dwelling thereon which has been actually and lawfully occupied by such individual or family for not less than ninety days immediately prior to the initiation of negotiations for the acquisition of such property, such payment to such individual or family shall not exceed one thousand five hundred dollars. Such payment shall be the amount which is necessary to enable such individual or family to lease or rent for a period not to exceed two years, or to make the down payment on the purchase of, a decent, safe and sanitary dwelling adequate to accommodate such individual or family. Application for payment under this subdivision shall be made to the commissioner upon forms prescribed by him and shall be accompanied by such information and evidence as the commissioner may require. Upon approval of such application, the commissioner shall deliver a copy thereof to the comptroller, together with a certificate stating the amount due thereunder, and the amount so fixed shall be paid out of the state treasury after audit by the comptroller from moneys appropriated for the acquisition of property under this section.

(m) The owner of any real property so acquired may present to the court of claims, pursuant to section five hundred three of the eminent domain procedure law a claim for the value of such property acquired and for legal damages caused by such acquisition, as provided by law for the filing of claims with the court of claims. Awards and judgments of the

court of claims shall be paid in the same manner as awards and judgments of that court for the acquisition of lands generally and shall be paid out of the state treasury after audit by the comptroller from moneys appropriated for the acquisition of such real property.

(n) If the commissioner of mental hygiene shall determine subsequent to the acquisition of a temporary easement in any real property that the purposes for which such easement right was acquired have been accomplished and that the exercise of such easement is no longer necessary, he shall make his certificate that the exercise of such easement is no longer necessary and that such easement right is therefore terminated, released and extinguished. The commissioner of mental hygiene shall cause such certificate to be filed in the office of the department of state and upon such filing all rights acquired by the state in such property shall cease and determine. The commissioner of mental hygiene shall cause a certified copy of such certificate as so filed in the office of the department of state to be mailed to the owner of the property affected, as certified by the attorney general, if the place of residence of such owner is known or can be ascertained by a reasonable effort and such commissioner of mental hygiene shall cause a further certified copy of such certificate to be filed in the office of the recording officer of each county in which the property affected or any part thereof is situated. On the filing of such certified copy of such certificate with such recording officer, it shall be his duty to record the same in his office in the books used for recording deeds and to index the same against the name of the people of the state of New York as grantor.

(o) If moneys appropriated by the legislature for the acquisition of any real property under this section are subject to repayment, the comptroller shall annually certify to the trustees of the health and mental hygiene facilities improvement corporation on or before May first in every year, the costs of acquisition of such real property paid during the preceding state fiscal year and the aggregate costs of acquisition of such real property paid during all preceding state fiscal years out of the state treasury from moneys so appropriated.