§ 3.19 Acquisition of property by eminent domain. 1. Whenever the commissioner deems it necessary to acquire property pursuant to the eminent domain procedure law, he shall cause to be made an accurate acquisition map as provided in said law. The acquisition map shall be made from an accurate survey of the property to be so acquired or in or to which any easement or estate less than full title is to be acquired specifying the particular nature and extent thereof, except that whenever a duly certified map or description of the property, easement or estate less than full interest to be acquired is available as a matter of public record, then in that event such map or description may be used by the commissioner to prepare the acquisition map. Upon the approval of the acquisition map by the commissioner, which shall be endorsed thereon, he shall acquire such property, easements, interests or rights in accordance with the provisions of the eminent domain procedure law.

2. If the commissioner shall determine, prior to the filing of the acquisition map in the office of the clerk or register of the county, as provided in the eminent domain procedure law, that changes, alterations or modifications of such map as filed in the office should be made, he or she shall direct the preparation of a new map or direct that changes be made on the original tracing of such map, with a notation indicating such changes. Upon approval of such amended map by the commissioner, it shall be filed in the main office of parks, recreation and historic preservation as the original map was filed and the amended map shall thereupon in all respects and for all purposes supersede the map previously filed.

3. If the commissioner shall determine, prior to the filing of a copy of the acquisition map in the office of the county clerk or register as provided in the eminent domain procedure law, that such map should be withdrawn, he or she shall file a certificate of withdrawal in the office and department of law.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.

5. If, at or after the vesting of title to such property in the people

of the state of New York in the manner provided in the eminent domain procedure law, the commissioner shall deem it necessary to cause the removal of an owner or other occupant from such property, he may cause such owner or other occupant to be removed therefrom by proceeding in accordance with section four hundred five of said law. The proceeding shall be brought in the name of the commissioner as agent of the state. If any person proceeded against shall contest the petition by an answer, the attorney general shall be notified, and he thereafter shall represent the petitioner in the proceedings. No execution shall issue for costs, if any, awarded against the state or the commissioner, but they shall be part of the costs of the acquisition and be paid in like manner. Proceedings may be brought separately against one or more of the owners or other occupants of a property, or one proceeding may be brought against all or several of the owners or other occupants of any or all property within the territorial jurisdiction of the same justice or judge; judgment shall effect or 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.

6. No agreement made by the commissioner in accordance with the provisions of section three hundred four of the eminent domain procedure law shall be binding upon the state of New York unless the attorney general shall certify that the person or persons claiming the amount so agreed upon be entitled thereto. Payment shall be made upon audit and warrant of the comptroller of the amount so agreed upon from monies appropriated for such purposes.

7. 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.

8. (a) The commissioner, with the approval of the director of the budget, shall establish and may from time to time amend rules and regulations authorizing the payment of the following expenses and losses incurred by the displaced owners or occupants of a property acquired pursuant to this section as a result of such acquisition:

(i) actual reasonable and necessary moving expenses; and

(ii) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation on such property, but not exceeding an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the commissioner; and

(iii) actual reasonable expenses in searching for a replacement business or farm; and

(iv) actual and reasonable expenses necessary to reestablish a displaced farm operation, not-for-profit organization, or small business at its new site but not to exceed the maximum amount provided for in the regulations.

(b) Such regulations may provide in hardship cases for the advance payment of such expenses and losses. For the purposes of making payment of such expenses and losses only, such regulations shall provide that the term "business" includes any lawful activity conducted primarily for assisting in the purchase, sale, resale, manufacture, processing or marketing of products, commodities, personal property or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted. Such rules and regulations may further define the terms used in this subdivision. Such regulations may also provide for payments to utilities for the relocation of their facilities under such circumstances and in such amounts as the commissioner may determine.

(c) Any person eligible for the payments authorized by paragraph (a) of this subdivision who is displaced from a residential property may, in lieu of such payments, elect to accept an expense and dislocation allowance, determined in accordance with a schedule prepared by the commissioner and made a part of such rules and regulations.

(d) Any person eligible for the payments authorized by paragraph (a)

of this subdivision, who is displaced from a business or farm operation and who is eligible under criteria established by the department may, in lieu of such payments, elect to accept a fixed relocation payment, except that such payment shall be not less than the minimum nor more than the maximum amount provided for in the regulations. However, a person whose sole business at the property so acquired is the rental of such property to others shall not qualify for payment under this paragraph.

(e) Application for payment under this subdivision shall be made to the commissioner upon forms prescribed by the commissioner 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. No payment shall be made under this subdivision for any cost, expense, difference or other amount for which payment was previously made.

(f) The regulations necessary to implement this subdivision shall be consistent with the applicable provisions of section thirty of the highway law, as the same may from time to time be amended, and regulations issued thereunder.

9. (a) 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 by eminent domain who are entitled thereto, as determined by the commissioner. The commissioner, with the approval of the director of the budget, may establish and from time to time amend rules and regulations providing for such supplemental relocation payments. Such rules and regulations may further define the terms used in this subdivision.

(b) In the case of residential property acquired pursuant to this section which is improved by a dwelling actually owned and occupied by the displaced owner for not less than one hundred eighty days immediately prior to initiation of negotiations for the acquisition of such property, such supplemental relocation payment to such owner shall not exceed the maximum amount provided for in the regulations. Such

payment shall include the following elements:

(i) the amount, if any, which when added to the acquisition payment equals the average price, established by the commissioner, required to obtain a comparable replacement dwelling for such displaced owner, but in no event shall such payment exceed the difference between acquisition payment and the actual purchase price of the replacement dwelling; and

(ii) the amount which will compensate such displaced owner for any increased interest costs which such person is required to pay for financing the acquisition of the comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired pursuant to this section was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than one hundred eighty days prior to the initiation of negotiations for the acquisition of such property. Any such compensating interest payment shall, notwithstanding the provisions of section twenty-six-b of the general construction law, be in lieu of and in full satisfaction of the requirements of such section; and

(iii) an amount which will compensate such displaced owner for reasonable expenses incurred for evidence of title, recording fees and other closing costs incident to the purchase of the comparable replacement dwelling, but not including prepaid expenses.

(c) Any supplemental relocation payment made pursuant to paragraph (b) of this subdivision shall be made only to a displaced owner who purchases and occupies a comparable replacement dwelling within one year subsequent to the date on which such owner is required to move from the dwelling acquired pursuant to this section or the date on which such owner receives from the state final payment for such acquired dwelling, whichever occurs later. The commissioner may extend such period for good cause; provided however, that any payment shall be based on the costs of relocating the displaced person to a comparable replacement dwelling within one year of such extended date. The regulations may provide that advance payment of such payments may be made in hardship cases.

(d) In the case of residential property acquired pursuant to this section from which an owner or tenant, not otherwise eligible to receive a supplemental relocation payment pursuant to the provisions of paragraph (b) of this subdivision, is displaced from dwelling thereon which has been actually and lawfully occupied by such owner or tenant for not less than ninety days immediately prior to (i) the initiation of

negotiations for the acquisition of such property or (ii) such other event as regulations may prescribe when the displacement is not a direct result of such acquisition, such supplemental relocation payment to such owner or tenant shall not exceed the maximum amount provided for in the regulations. Such payment shall be the amount which is necessary to enable such owner or tenant to lease or rent for a period not to exceed the maximum time specified in the regulations, a comparable replacement dwelling but such amount shall not exceed the maximum amount specified in the regulations. Such payments may be made in periodic installments as determined by the commissioner. Any person eligible for a supplemental relocation payment under this paragraph may elect to use such payment for the down payment, including reasonable expenses incurred by such owner or tenant for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses, on the purchase of a comparable replacement dwelling, except such payment shall not exceed the maximum amount provided for in the regulations.

(e) Application for payment under this subdivision shall be made to the commissioner upon forms prescribed by the commissioner 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. No payment shall be made under this subdivision for any cost, expense, difference or other amount for which payment was previously made.

(f) The regulations necessary to implement this subdivision shall be consistent with the applicable requirements of section thirty of the highway law, as the same may from time to time be amended, and regulations issued thereunder.

10. Expenses incurred in the acquisition of the property, including the cost of making surveys, preparing descriptions and maps, appraisals, title searches, service and publication of notices, and expenses incurred in proceedings for the removal of owners or occupants, shall be deemed to be part of the cost of the acquisition of such real property

and shall be paid accordingly out of any moneys appropriated for the acquisition of such property.

11. The state of New York shall be liable for any damages to any real property caused by the making of surveys, test pits, test borings or other investigations pursuant to section four hundred four of the eminent domain procedure law. Such damages may be recovered and adjusted and paid in the same manner as provided in this section with respect to compensation for real property acquired by eminent domain.

12. The owner of any real property acquired by eminent domain 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 appropriated and for legal damages caused by such appropriation, 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.

13. If the commissioner shall determine subsequent to the appropriation 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 shall cause such certificate to be filed in the office of parks, recreation and historic preservation and a copy thereof certified by the commissioner to be filed in the office of the clerk or register 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 clerk or register, 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 grantors. On the filing and recording of such certificate in the office of such clerk or

register, all rights acquired by the state under such temporary easement shall cease. The commissioner shall cause a further certified copy of such certificate, with notice of the filing thereon in the office of parks, recreation and historic preservation and of the filing and recording of a certified copy thereof in the office of the clerk or register, to be mailed to each owner of the property affected, as certified by the attorney general, if the place of residence of such owner is known.

14. The commissioner, may make arrangements with respect to any lands heretofore or hereafter acquired by him, whereby such lands may continue to be occupied and used by the former owners, their tenants or assigns or by any other party from a date specified in said agreement until the state requires and obtains actual physical possession of such lands, provided that during the period of such occupancy, such lands shall remain on the assessment rolls of the municipality, school districts and other districts in which they are located and shall be subject to real estate taxes and assessments in the same manner as privately owned lands. The right of a former owner, tenant, assignee or other party to occupy and use such lands shall be conditioned on the prompt payment of the full amount of such taxes and assessments, with interest and penalties, if any, and compliance with the provisions of section three hundred five of the eminent domain procedure law, if applicable. The state shall not be liable for real estate taxes or assessments on such lands during such a period. A copy of any such agreement shall be filed with the county clerk of the county in which such lands are located. Nothing herein contained shall be construed to limit the authority of the commissioner to accept conditional grants, bequests or devises of property under other provisions of this chapter.