§ 40. Real property; purchase or acquisition. 1. The commissioner, when an appropriation therefor has been made by the legislature, may acquire any real property which he may deem necessary for any departmental purpose by purchase or, in the manner provided in the eminent domain procedure law. Title to any such real property 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.

2. Whenever real property is to be acquired pursuant to the eminent domain procedure law, the commissioner shall cause to be made by the state department of transportation an accurate acquisition map as so provided in such law.

3. 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 eminent domain procedure law.

4. 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 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.

5. 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 paragraph three of subdivision (A) of section four hundred two of the eminent domain procedure law, that such map should be withdrawn, he or she may file a certificate of withdrawal in the offices of the department and of the department of law.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.

6. The commissioner 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 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.

7. 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 shall deem it necessary to cause the removal of an owner or occupancy 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 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, 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.

8. Upon making any agreement provided for in section three hundred four of the eminent domain procedure law, the commissioner shall deliver to the comptroller such agreement and a certificate stating the amount due such owner or owners thereunder on account of such acquisition 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.

9. 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.

10. 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 actual reasonable and necessary moving expenses of occupants of property acquired pursuant to this section; of actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, 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 actual reasonable expenses in searching for a replacement business or farm; or in hardship cases for the advance payment of such expenses and losses. For the purposes of making payment of such expenses and losses only the term "business" means 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. 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, except that such payment shall be not less than two thousand five hundred dollars nor more than ten thousand dollars. 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. In the case of a business which is to be discontinued but for which the findings and determinations set forth above cannot be made, the commissioner may prepare an estimate of what the actual reasonable and necessary moving expenses, exclusive of any storage charges, would be if the business were to be relocated and enter into an agreed settlement with the owner of such business for an amount not to exceed such estimate in lieu of such actual reasonable and necessary moving expenses. 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 the term "commercial property" shall include property owned by an individual, family, partnership, corporation, association or a nonprofit organization and includes a farm operation. As used in this subdivision the term "business" means any lawful activity, except a farm operation, conducted primarily for the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property; for the sale of services to the public; or by a nonprofit organization.

11. 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 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. In the case of 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 payment to such owner shall not exceed fifteen 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, reasonably accessible to public services and places of employment and available on the private market, but in no event shall such payment exceed the difference between acquisition payment and the actual purchase price of the replacement dwelling. Such payment shall include an amount which will compensate such displaced owner for any increased interest costs which such person is required to pay for financing the acquisition of any such 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 dwelling. Such amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located. Any such mortgage interest differential 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. Such payment shall include reasonable expenses incurred by such displaced owner for evidence of title, recording fees and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses. Such payment shall be made only to a displaced owner who purchases and occupies a replacement dwelling which is decent, safe and sanitary within one year subsequent to the date on which he is required to move from the dwelling acquired pursuant to this section or the date on which he receives from the state final payment of all costs of the acquired dwelling, whichever occurs later, 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 the above 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 four thousand 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 four years, a decent, safe, and sanitary dwelling of standards adequate to accommodate such individual or family in areas not generally less desirable in regard to public utilities and public and commercial facilities and reasonably accesible to his place of employment, but shall not exceed four thousand dollars, or to make the down payment, including reasonable expenses incurred by such individual or family 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 decent, safe and sanitary dwelling of standards adequate to accommodate such individual or family in areas not generally less desirable in regard to public utilities and public and commercial facilities, but shall not exceed four thousand dollars, except if such amount exceeds two thousand dollars, such person must equally match any such amount in excess of two thousand dollars, in making the down payment. Such payments may be made in installments as determined by the commissioner. 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.

12. The owner of any real property so acquired may present to the court of claims, pursuant to subdivision (A) of section five hundred three of the eminent domain procedure law, a claim for the value of such property and for other legal damages 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. Expenses incurred in the acquisition of the property, including the cost of 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.

14. If the commissioner 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 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 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 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.