

PROCEDURES FOR SEEKING RELIEF FROM RATE AND DAMAGE SCHEDULE APPLICABLE TO
EASEMENTS AND OTHER INTERESTS ON UNIVERSITY LANDS

In accordance with Section 66.46(m), *Texas Education Code*,¹ a person may seek relief from a rate and damage schedule established in accordance with Regents' *Rules and Regulations*, Rule 70301, as provided by this policy.

Sec. 1. Fair Market Value Presumed. The rate and damage schedule is presumed to reflect fair market value for each interest for which a rate or damage amount is listed. To overcome that presumption, a person must show by clear and convincing evidence that the rate or damage amount exceeds fair market value of the interest being sought.

Sec. 2. Determination of Fair Market Value. (a) "Fair market value" means the going rate or damage amount as of the appraisal date that persons pay for a similar interest on substantially similar property in West Texas.

(b) Any market study offered as evidence of fair market value must be prepared in accordance with the Uniform Standards of Appraisal Practice and signed by a person licensed in Texas as a certified general appraiser.

(c) Easements on University Lands are limited by law to term easements not to exceed 10 years.² Evidence of market value must include comparisons to the going rate on similar term easements on substantially similar property in West Texas.

Sec. 3. Negotiation with Executive Director Required. (a) The management of University Lands has been delegated to the Executive Director of University Lands with offices at 704 W. Dengar Avenue, Midland, Texas 79705-5319. The Executive Director has full authority to negotiate rates and damages, including rates that exceed those listed on a rate and damage schedule. The Executive Director does not have the authority to approve a rate that is less than fair market value.

(b) A person seeking to obtain an interest or to renew an existing interest who objects to the rate and damage schedule as not reflective of fair market value must first negotiate in good faith with the Executive Director in regard to the fair market value of a specific interest sought to be obtained or renewed.

(c) Good faith negotiation requires presentation by the person seeking to obtain the interest of evidence of the fair market value of the interest being sought.

(d) A person may not seek relief from a rate and damage schedule under these procedures, including any appeal to the Executive Vice Chancellor for Business Affairs or the Board of Regents, in the absence of a proposal to obtain or renew a specific interest.

¹ "(m) The board of regents shall establish procedures by which a person seeking an easement or other interest under this section may seek relief from a rate or damage schedule that the person believes does not represent the fair market value of the interest being sought."

² Sec. 66.46, *Texas Education Code*

Sec. 4. Appeal to Executive Vice Chancellor for Business Affairs. (a) If, after good faith negotiation with the Executive Director, a person seeking to obtain an interest or renew an existing interest believes that the rate and damage schedule does not reflect fair market value of the interest being sought, the person may appeal in writing to the Executive Vice Chancellor for Business Affairs, The University of Texas System, 201 West 7th Street, Austin, Texas 78701-2982.

(b) The only issue in an appeal under these procedures is whether a rate or damage amount listed in the applicable schedule reflects the fair market value of the interest sought. The appeal must be accompanied by evidence that the rate and damage schedule does not reflect fair market value.

(c) After considering the written appeal, the Executive Vice Chancellor for Business Affairs may require the person making the appeal to meet with the Executive Vice Chancellor for Business Affairs concerning the matter. That meeting may include representatives of University Lands or other persons, at the discretion of the Executive Vice Chancellor for Business Affairs. The person making the appeal, in his discretion, may be represented by another person at the meeting, including legal counsel.

(d) A meeting with the Executive Vice Chancellor for Business Affairs is not intended as a formal evidentiary hearing, and the Executive Vice Chancellor for Business Affairs may consider any information the Executive Vice Chancellor for Business Affairs deems appropriate in regard to the fair market value of the interest sought and the rates and damages listed in the applicable schedule. However, the Executive Vice Chancellor for Business Affairs may not consider evidence of fair market value that was not previously presented to the Executive Director of University Lands.

(e) The Executive Vice Chancellor for Business Affairs shall communicate his decision in writing to the person making the appeal and to the Executive Director of University Lands.

Sec. 5. Appeal to the Board of Regents. (a) A person who is dissatisfied with the decision of the Executive Vice Chancellor for Business Affairs may appeal that decision in writing to the Board of Regents. The appeal shall be addressed to the Secretary of the Board of Regents, 201 West 7th Street, Suite 820, Austin, Texas 78701.

(b) The only issue in an appeal to the Board of Regents is whether a rate or damage amount listed in the applicable schedule reflects the fair market value of the interest being sought. The appeal must be accompanied by the evidence presented to the Executive Director of University Lands that the rate and damage schedule does not reflect fair market value of the interest being sought. The Board will not consider evidence of fair market value not previously presented to the Executive Director.

(c) The decision of the Board is final.

Sec. 6. Procedure. (a) This procedure is not subject to the Administrative Procedure Act, *Texas Government Code* §§ 2001.001 *et seq.*, but the Executive Vice Chancellor for Business Affairs or the Board of Regents may refer to that Act for guidance in the matters of admission of evidence or testimony of witnesses.

(b) At any stage of the appeal, the evidence of fair market value is limited to that presented to the Executive Director of University Lands. If new evidence is developed after the beginning of the appeal process, it must be submitted to the Executive Director and the process must restart.