



KOPELMAN AND PAIGE, P.C.

The Leader in Municipal Law

Municipal Real Estate Purchase/Gift Checklist

- Identify land to be acquired through RFP or a uniqueness determination under G.L. c.30B, §16 (not required for a gift or if value is \$25,000 or less) or Community Preservation Act process (G.L. c.44B)
- Enter into a purchase and sale or donation agreement subsequent to or conditioned upon a favorable Town Meeting or City /Town Council vote if required
- Obtain Town Meeting or City /Town Council vote authorizing the acquisition and appropriation of funds, if necessary (2/3 vote required for appropriation, with some statutory exceptions)
- Obtain a title examination of the property
- Obtain a survey of the property and plan endorsement by the Planning Board if you are acquiring a portion of a larger tract of land (usually seller's obligation); ensure that the property is properly zoned for the intended use
- Obtain G.L. c.21E site inspection of the property by a licensed site professional if history or view indicates hazardous material may have been used
- Obtain Title 5 certification from seller, if subsurface sewage disposal is used; perform any other testing or inspections necessary to determine whether the property is suitable for the intended municipal use
- Comply with relocation obligation under G.L. c.79A
- Request seller/donor to provide a draft deed for the property to your town counsel/city solicitor
- Obtain municipal lien certificate from tax collector (taxes must be paid to date of closing unless tax abatement is authorized under G.L. c.58, §8 or G.L. c.60, §77C)
- Obtain documents necessary to clear title, e.g., discharge of mortgage
- Obtain a "Disclosure of Beneficial Interest Statement" from seller (G.L. c.7, §40J) and file with the Division of Capital Asset Management and Maintenance (DCAM)
- Prepare settlement statement showing closing adjustments and funds to be disbursed
- Appropriate board or officer accepts property and signs acceptance form with certified copy of Town Meeting/City Council vote, if needed, attached
- Arrange for final inspection, delivery of deed and title rundown; record deed and acceptance form and release funds to seller
- Send copy of recorded deed to appropriate board or officer, and request abatement of post-closing taxes from assessors; send original recorded deed to City/Town Clerk
- Obtain title insurance, if desired

Eminent Domain Taking Checklist G.L. c.79

- Identify land or easement to be acquired
- Obtain plan of land or easement from registered land surveyor
- Obtain appraisal before taking is made unless owners waive appraisal
- Determine whether betterments are to be assessed for the project for which the taking is made
- Obtain Town Meeting or City/Town Council vote authorization and appropriation (2/3 vote required for appropriation, with some statutory exceptions)
- Obtain title examination for property to confirm names of owners and determine mortgagees or other parties of interest
- Draft order of taking, notice, offers, and other associated documents
- Comply with relocation obligation under G.L. c.79A
- Authorized board or officer executes order of taking
- Record order of taking and plan - MUST be recorded at Registry of Deeds within 30 days of execution; title vests upon recording
- Consult with Accountant/Treasurer relative to time of payment of pro tanto amount to property owner and set time and place for payment
- Execute and serve notice of taking and pro tanto offer on owner and any mortgagee by: personal service, service at residence or registered mail; offer must be made within 60 days of taking
- Send copy of recorded order of taking to Tax Collector and appropriate board or officer; send original recorded order of taking to City/Town Clerk
- Make pro tanto payments upon application by property owner, making sure that owner and mortgagee have agreed to whom the damages will be paid

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Municipal Real Estate Acquisition See also G.L. c.30B, §16

Purpose	Statutory Authorization	City Council/Town Meeting Vote	Board or Officer Authorized to Acquire	Notes
General Purpose	G.L. c.40, §14	Required ¹	Board of Selectmen or Mayor	Limited to land within city or town not already in public use
Affordable Housing	G.L. c.44, §55C ³ G.L. c.44B ²	Not required under c.44, §55C for purchase ⁷ or gift; required under c.44B	c.44, §55C, Trustees; c.44B, Executive Officer(s) unless otherwise voted	Under c.44, §55C, power to acquire by purchase or gift (not eminent domain) may be granted to Trustees; Under c.44B, CPA Committee must recommend acquisitions
Common Landings ^{4,5}	G.L. c.88, §14	Required to accept layout ^{6,7}	City Council or Board of Selectmen	Layout must be filed with City/Town Clerk, County Commissioners, Department of Conservation and Recreation, and Registry of Deeds
Conservation, Open Space ⁵	G.L. c.40, §8C G.L. c.44B ²	Not required under c.40, §8C for purchase ⁷ or gift; required under c.44B	c.40, §8C, Conservation Commission; c.44B, Executive Officer(s) unless otherwise voted	Under c.40, §8C, City Council or Board of Selectmen approval required for gift and 2/3 vote of City Council/Town Meeting required for eminent domain and taking must be made by Board of Selectmen/Mayor; under c.44B, CPA Committee must recommend acquisition
Drains for Highways (town ways)	G.L. c.83, §4	Not required ⁷	Officers having charge of highways	County Commissioners are authorized to acquire for drains and ditches in county ways and the department of highways for those in state highways
Footways and Bicycle Paths ⁴	G.L. c.82, §§33-35	Required to accept layout ^{6,7}	City Council or Board of Selectmen	Or Road Commission ⁸ of town; if G.L. c.82, §34 is accepted, bicycle paths may be reserved within sidelines of public ways
Historic Preservation ⁵	G.L. c.40, §8D G.L. c.44B ²	Not required for purchase ⁷ or gift	Historical Commission	Vote of City Council/Town Meeting required for eminent domain (2/3 vote if appropriation needed)
Park, Parkway ⁵	G.L. c.45, §§3-4	Required by 2/3 vote for purchase or eminent domain, not gift	Park Commission or Board of Selectmen acting as Park Commission	Acquisition of parkways requires consent of public authority controlling way and written consent of a majority of abutters
Playground ⁵	G.L. c.45, §14	Not required ⁷	Park Commission	Or School Committee, Planning Board, Playground or Recreation Commission, as the City Council/Town Meeting may decide
Public Domain/ Town Forest ⁵	G.L. c.45, §§19-23	Required by 2/3 vote at annual meeting	City Council/Mayor or Board of Selectmen	Mayor/Council or Selectmen shall appoint a Town Forest Committee to manage the public domain land dedicated to town forest or town may vote that Conservation Commission shall manage town forest
Public Way ⁴	G.L. c.82, §§21-24	Required to accept layout ^{6,7}	City Council or Board of Selectmen	Or Road Commission ⁸ of town; towns (not cities) must acquire land or easements within 120 days of Town Meeting vote
Public Water Supply	G.L. c.40, §§39B, 39D	Not required ⁷	Water Commission or Selectmen acting as Water Commission ⁸	Department of Environmental Protection approval required to use such land; special legislation may vary or supersede these requirements
Public Water Supply Protection ⁵	G.L. c.40, §§39B, 41 G.L. c.44B ²	Not required under c.40, §§39B, 41 ⁷ ; required under c.44B ²	Water Commission or Selectmen acting as Water Commission ⁸	Department of Environmental Protection approval and hearing required to take such land; DEP must determine acquisition to be necessary; special legislation may vary or supersede these requirements
Sewers or Drains	G.L. c.83, §1	Not required ⁷	Sewer Commission or Board of Selectmen or Road Commission ⁸	Special legislation may vary or supersede these requirements

1. 2/3 vote required if an appropriation is necessary; majority vote if gift

2. For CPA funded projects where Community Preservation Act has been accepted; c.44B, §12 requires a restriction; c.44B, §6(f) requires 2/3 vote for taking

3. Where Affordable Housing Trust Fund Act has been accepted

4. Procedure for laying out of public ways under c.82, §§21-24

5. Article 97 applies to land or interest acquired for this purpose

6. In cities, Council votes layout and no further vote is required to accept layout; 2/3 vote required if way not previously approved under subdivision control law

7. Required if appropriation of funds is necessary (majority vote)

8. Or Board of Public Works, if such exists

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