

## §211.18

or for rents or other payments of a contractual nature regardless of amount arising out of the use and occupation of real estate under an agreement, express or implied, or otherwise.

### §211.18 Action by claimant.

Real estate claims may be presented by the owner of the property or his duly authorized agent or legal representative. The word "owner", as so used, includes lessees, mortgagors, and conditional vendees, but does not include mortgagees, conditional vendors, and others having title for purposes of security only. The claim, if filed by an agent or legal representative, should show the title of the person signing and be accompanied by evidence of the appointment of such person as agent, executor, administrator, guardian, or other fiduciary.

### §211.19 Place of filing claims.

All real estate claims should be submitted to the United States Division Engineer in whose jurisdiction the claim arises.

### §211.20 Form of claim.

Claims should be submitted by presenting in triplicate a signed statement, giving the claimant's address, setting forth the amount of the claim, and, so far as possible, the detailed facts and circumstances giving rise to the claim, indicating and describing the property involved, the date or dates, and the nature and extent of the damage, loss or destruction claimed, and the agency or branch of the Department of the Army or Army using the property. Upon receipt of such a claim the Division Engineer will, where practicable or necessary, furnish the claimant with Department of the Army forms for a more formal presentation of his claim including instructions as to their use.

### §211.21 Evidence to be submitted by claimant.

(a) All claims must be substantiated by competent evidence. If the claim is for rent or other payment the claimant should furnish evidence as to the value of the property, income from the property if previously rented, or rental value of similar property in the vicin-

## 33 CFR Ch. II (7-1-04 Edition)

ity. If the property is under a formal lease to the Government, the claimant should identify the lease and state the covenants of the lease upon which he predicates his claim. Where the claim is for damage to the property which has been or can be economically repaired the claimant should submit in triplicate an itemized signed statement or estimate of the cost of repairs and copies of itemized receipts, evidencing payment for any expenditures made in relation to the property for which reimbursement is claimed.

(b) In support of claims for damage to crops the claimant should submit a statement showing the number of acres, or other unit measure of crops damaged, the normal yield per unit, the gross amount which would have been realized from normal yield, and an estimate of the further cost of cultivation, harvesting and marketing; if the crops are one which need not be planted each year, the diminution in value of the land beyond the damage to the current year's crop should also be stated. All such statements or estimates should, if possible, be by disinterested competent witnesses, preferably responsible dealers of the type of property damaged.

### §211.22 Real estate Claims Officers.

In each Division Office the Division Engineer has appointed a Claims Officer or Assistant Claims Officers who have the duty and responsibility under the direction of the Division Real Estate Officer, to investigate all real estate claims. The activities and responsibilities of these Claims Officers are described more fully under §211.23.

### §211.23 Procedure.

Upon the receipt of any real estate claim it is submitted to a Claims Officer who investigates the matter and secures all evidence necessary for a full consideration of the claim and upon which a determination can be made as to the liability of the Government. For this purpose the Claims Officer is authorized and charged with the duty of securing sufficient evidence to establish with certainty the following general points:

(a) The nature of the claim.

(b) The interest of the claimant in the property and the interest that others may have in the property.

(c) Date and circumstances under which occupation of premises occurred and date of vacation. If under a lease, the lease number and date of lease.

(d) Inspection of the premises and determination of the amount of damages.

(e) If claim is for rental without formal lease or agreement, data as to the market and rental value of the property.

(f) Any other pertinent evidence the particular facts of the case require.

The above obligations of the Claims Officer does not relieve the claimant from the burden of proving his claim and it is the duty and obligation of the claimant to furnish such evidence within his particular knowledge as the Claims Officer may require.

Upon completion of his investigation the Claims Officer prepares a report setting forth completely but briefly the nature and amount of the claim, all pertinent facts necessary to determine the rights and liabilities of the claimant and the Government, and the Claims Officer's conclusions and recommendations as to allowance or disallowance of the claim in whole or in part and reasons therefor, including citations to any laws, statutes, or other decisions which it is believed will substantiate his recommendation.

#### § 211.24 Disposition of claims.

(a) *Real estate claims for damages.* Real estate claims for damages not exceeding \$1,000 may be settled by the Division Engineer. If the Division Engineer allows the claim in toto it is transmitted to the local Disbursing Officer who transmits a check to claimant in payment of the claim. Where the claim is disallowed by the Division Engineer, in whole or in part, the claimant is so advised and in the event that he is unwilling to accept the decision of the Division Engineer, he may appeal within 30 days after receipt of such notice, through the Division Engineer's Office, to the Secretary of the Army. This appeal should state in full reasons for not accepting the Division Engineer's award.

(b) *Claims for damages in excess of \$1,000.* Claims for damages in excess of

\$1,000 arising out of the use and occupancy of real estate under an agreement, express or implied, or otherwise, are forwarded to the General Accounting Office for settlement.

(c) *Claims for rent or other payments.* Claims for rent or other payments of a contractual nature regardless of amount arising out of the use and occupancy of real estate under an agreement, express or implied, or otherwise, are forwarded to the General Accounting Office.

(d) *Mixed claims for rental and damages.* When a claim arising from the use and occupancy of real estate has been received, the elements of the claim are first determined. If the claim is for damages not in excess of \$1,000 and rental, these elements are if practicable, separated and the damages settled under AR 25-25, otherwise the claims are forwarded to the General Accounting Office for direct settlement.

#### FEDERAL JURISDICTION OVER REAL ESTATE

AUTHORITY: Sections 211.25 through 211.28 issued under R.S. 161; 5 U.S.C. 301.

SOURCE: 13 FR 8751, Dec. 30, 1948, unless otherwise noted.

#### § 211.25 General considerations in the acquiring of Federal jurisdiction.

(a) *Laws governing the acquisition of Federal jurisdiction—(1) Constitution of the United States.* By Article 1, Section 8, Clause 17, of the Constitution, Congress has the power to exercise exclusive legislation in all cases in the District of Columbia and to exercise like authority over all land acquired by the United States with the consent of the legislature of the State in which the land is located for the erection of forts, magazines, arsenals, dockyards, and other needful buildings.

(2) *Section 355, Revised Statutes of the United States.* Under this section as amended by the acts of Congress approved February 1, 1940 (54 Stat. 19) and October 9, 1940 (54 Stat. 1083; 40 U.S.C. 255), jurisdiction over lands acquired by the Department of the Army does not vest until the Secretary of the Army has indicated acceptance of such jurisdiction by filing a notice of acceptance