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Real estate acquisition in Afghanistan more complex than location location location

KANDAHAR AIRFIELD, Afghanistan — During armed conflict or contingency operations, U.S. Forces are authorized to use foreign real estate for such things as camp sites and construction of fortifications, according to Army Field Manual 27-10, The Law of Land Warfare. Today, dozens of forward operating bases, combat outposts and similar facilities exist in Afghanistan so troops can conduct operations while better protecting themselves and the local population against insurgent forces.

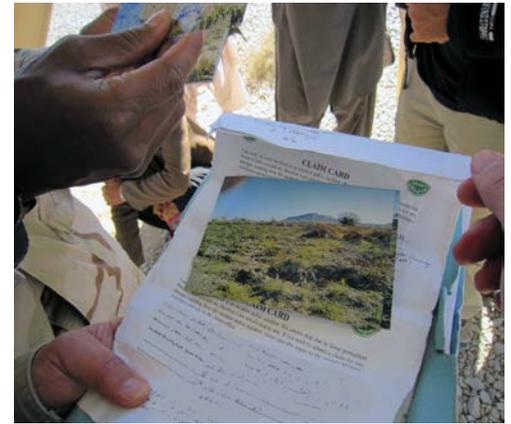
The authority to acquire real estate in foreign countries in support of military contingency operations is delegated to the Assistant Secretary of the Army. Authority is further delegated to the U.S. Army Corps of Engineers and at the Afghanistan Engineer District-South, to its expert on the ground, the real estate division chief. His specialized team of five real estate experts and a local translator assists commanders and battle space owners with negotiating and executing real estate instruments so the United States may legally occupy land in Afghanistan.

"Our mission is to acquire, manage, and dispose of real estate in support of U.S. Forces through leases for private property; no cost land use agreements with the host nation; permits with NATO forces; and licenses for construction of Afghan National Security Forces projects," said Keith Loos, chief of the small and bustling South District office. "Supporting our military units and offering them subject matter expertise on all real estate matters is our primary focus."

Since its establishment in 2009, the South District has acquired over 142,000 acres of land for approximately 300 bases, checkpoints and sites in its area of responsibility which include Badghis, Daykundi, Farah, Ghor, Helmand, Herat, Kandahar, Nimroz, Uruzgan and Zabul province.

The South District has dispensed nearly \$3 million dollars to 250 private landowners for the rights to occupy their lands. What was not occupied through a lease was acquired under a no cost land use agreement with the Government of the Islamic Republic of Afghanistan.

"Units seeking real estate typically submit a Land Acquisition Request Form to the Corps of Engineers in advance of their occupancy and we ensure all requirements are met such as environmental baseline survey and proper ownership verification," said Loos, who is on his fourth deployment to Afghanistan from the Little Rock District and holds a master of business administration and is a certified general appraiser.



Weekly, Afghanistan Engineer District-South realty specialists Russ Wallace, (right) and Nick Norals, (left) meet with Afghan prospective claimants to discuss their real estate situations and determine if their claims are legitimate. (USACE Photo by Jasmine Chopra-Delgadillo.)

Sensitive operations sometimes make it impossible for real estate instruments to be in place before land is used. U.S. forces sometimes displace private citizens from their land to quickly establish forward operating bases and smaller camps. As long as the United States has a continuing need for the base, the Real Estate Division enters into a lease retroactively and pays the landowner. With the drawdown and the United States closing and transitioning more bases to the Afghan National Army, the timely execution of real estate actions is becoming more and more critical.

"A common challenge that arises with private citizens is verifying ownership when no legal documentation, such as a deed, exists," said South District Realty Specialist, Nick Norals, "or when no documentation of the alleged occupancy, such as video or pictures is available," said Norals, who deployed from the Nashville District.

Another important factor is con artists who abuse the claims resolution process.

"We have to protect the U.S. government against fraud," explained Russ Wallace, an economist and realty specialist who deployed from the Little Rock District.

Weekly, realty specialists including Wallace and Norals, meet with Afghan prospective claimants to discuss their real estate situations and determine if their claims are legitimate.

"There are a lot of Army regulations as well as legal information real estate specialists working in Afghanistan must thoroughly understand," said Norals. "These policies and procedures are necessary to ensure all U.S. Forces have the appropriate legal interest in land they use. The challenge of the language barrier, security, travel, and lack of records, survey of ownership and the processes of determining owners is unlike any situation real estate specialists in the States will experience."

Most realty specialists possess extensive knowledge about real estate business processes and laws and some even hold advanced degrees in real estate or business administration. Many even have certifications as appraisers or realtors, but they are normally not attorneys, so they must frequently communicate and coordinate actions with judge advocates.

The Department of Defense assigns licensed, practicing military attorneys with specialized claims experience, to resolve a variety of claims in Afghanistan. These judge advocates are crucial, but they have limits, too, and typically do not resolve real estate occupancy claims.

"We certainly want to resolve legitimate claims that are within our purview and we work closely with the judge advocates because sometimes, what seems to be a real estate issue at first is actually a different issue, covered by different regulations and we don't have the authority to resolve it," said Wallace. "Other times, claimants may have a real estate issue along with another issue that is beyond our scope. While we may be able to resolve their real estate occupancy claim, we still need to refer them to the judge advocate for assistance on the other issue," he said.

The variation and complexity of cases can be overwhelming, but as Loos advises, "it's essential that we do our due diligence. We need to do right by the lawful land owners through compliance with laws and regulations governing the use of real estate," he said.

Following the processes, policies and procedures is necessary to ensure all U.S. Forces have the appropriate legal interest in the land they use, based on Afghan law for legal ownership or Sharia law, he said.

"It's an intricate process and requires extensive coordination with our Coalition partners, Afghan counterparts and other customers and we are committed to doing it," said Loos.

Quickly and successfully conducting lawful real estate operations and resolving legitimate claims in a fair manner promote security and trust among the local population, he said.

"It is rewarding for me, personally, when we meet with an Afghan land owner who subsequently leaves satisfied that the claims process worked fairly," he said.

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