

2883 – MLA RIGHT-OF-WAY QUALIFICATIONS

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.10 Holder Qualifications.

A. General. Qualifications depend on whether the applicant/holder is an individual, group, association, corporation, partnership, or similar entity, or is a state or local government.

1. A ROW may be applied for and held by more than a single entity. Regardless of how the applicant/holder may indicate ownership among the members making up the applicant/holder, the BLM views them all as equally responsible and, if necessary, each totally responsible, for the operation, maintenance and termination of the ROW.

2. Corporations, etc., are required to disclose certain information about the applicant corporation or association such as identifying those entities owning three percent or more of the applicant entity (see 30 U.S.C. 185(i) for greater detail.)

3. Public Interest. It is not in the public interest to process a ROW application when the applicant is not in compliance with the terms and conditions of another ROW grant held by the applicant. This includes appropriate payment of rent and cost recovery. The existence of willful trespasses should be considered.

B. Real Property. An applicant must be legally capable of holding an interest in real property.

1. Individuals. The individual must be of legal age and competent. The BLM will assume competency unless it has good reason to do otherwise.

2. Business Entities. Unless the law under which the business entity is formed specifically states that the type of entity may hold interests in real property, the business's enabling papers- partnership agreement, association agreement, incorporation papers, etc. - must state that the entity may engage in, or is engaged in, the buying, holding, and selling of real property. In cases where the applicant corporation is owned by another corporation, the incorporation papers of the parent corporation may also have to be examined to determine the ability of the applicant to hold an interest in real estate.

C. Capable. Applicants must show that they are financially and technically capable of constructing, operating, maintaining, and terminating the proposed facilities. Levels of financial or technical capabilities compared to the facilities proposed provide a yardstick for possible bonding requirements. This "showing" of capability may simply be a signed statement or it may be in great detail – see F. below.

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D. Citizenship. Applicants must be a United States citizen, an association of such citizens, or a corporation, partnership, association, or similar business entity organized under the laws of the United States, or of any state therein; or a state or local government.

E. “Limited” Business Status. The organization papers submitted by ‘limited’ or ‘limited liability’ (LLC) associations, partnerships, companies, etc., must be closely reviewed for potential conditions that are unacceptable to the BLM. For example, LLCs may dissolve upon a fixed date or upon the death of one of the officers, leaving the BLM with a substantial liability. The BLM will consider the ‘limited’ liability of these organizations in any bonding requirement.

F. Papers. Unless it has good reason to believe otherwise, the BLM will accept papers filed by the applicant/holder as true and valid. The BLM may at any time, before or after issuing a grant, request additional information.

.11 Aliens may not acquire or hold any direct or indirect interest in MLA grants or temporary use permits, except as otherwise provided by treaty or similar agreement. If there is any question concerning alien controlled corporations, contact the Director (WO-350).

.12 Non-Individuals.

A. Business Qualifications. A corporation, partnership, association, limited or limited liability organization, or other legal entity must submit the following additional information:

1. Copies of the papers of incorporation or other documents that show the creation of the legal entity.

a. In some cases - minor associations or minor partnerships - filing with a government agency may not be required. In these cases, however, the association or partnership is not viewed by BLM as a separate entity and the organization’s activity is the responsibility of all members, jointly and individually. For these situations, decisions, grants, and other documents will use the names of all individuals involved; the BLM will not use the association or partnership name on official documents.

b. When the BLM is dealing with a business entity, it is important to understand any limitations placed on the entity by its enabling papers. In some cases, the enabling papers may limit the BLM’s ability to hold officers or individuals involved in the business entity responsible for actions performed under a ROW grant or to recover damages in the event of non-performance. Therefore, it is important that the enabling papers be kept in the case file.

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c. Evidence that the party signing the application has the authority to bind the applicant to the terms and conditions of a grant or permit (e.g. corporate resolution) shall be provided and kept in the case file.

d. If incorporated in another State, a certification that the company is entitled to operate in the State for which the ROW grant is sought, shall be provided and kept in the case file.

B. Government. A governmental applicant must be a State or local government. Departments and agencies of the Federal Government are not qualified applicants under the MLA.

.13 Subsequent Disqualification. Should it be determined after the grant has issued that the holder was not qualified or has lost qualification:

A. Assignment. Determine if the grant might be assigned to a qualified party; or

B. Terminate the grant by decision.

1. Include in the decision any terms or conditions for the protection of the environment or public safety.

.14 Disposition of Grant and Improvements upon Death of Holder.

A. Provisions within Grant. If the grant provides for a certain set of actions to take place in the event of the death of the holder, the provisions will apply.

B. No Provisions within Grant.

1. Qualified Successor. The BLM will accept a qualified successor to a deceased applicant/holder. An assignment shall be processed as appropriate.

2. Unqualified Successor. The BLM will recognize an unqualified successor for a period of two years to allow the party to become qualified or assign the ROW to a qualified party.

3. No Successor. The BLM must make a full attempt to locate a qualified successor. The following procedures will be initiated:

a. Document in the casefile the evidence of death of the holder and efforts taken by the BLM to locate successors to the holder. This may include telephone calls, undelivered mail, etc.

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b. In a newspaper(s) of 1) general circulation in the vicinity of the grant and 2) general circulation in the vicinity of the holder's last known address, publish a Legal Notice containing at a minimum the following information:

- (1) Name of deceased;
- (2) Brief description of authorization and any improvements;
- (3) Location of authorization;
- (4) Request for identity of successors;

(5) Notice that, barring a claim by a successor to the deceased, the grant will revert to the United States in 60 days after publication of the Notice; and

(6) Name, address, and phone number of the BLM official who can provide further information.

4. Take action appropriate with answers, if any, resulting from the publication.

C. Real Property. Upon reversion, the improvements must be listed on the BLM's real property inventory. Subsequent use and disposition is governed by the real property procedures (see Manual 1530).

.15 Agent of ROW Applicant. The BLM shall not recognize an agent unless the applicant has submitted documentation providing the extent to which the agent is allowed to represent the applicant. It is important to note that the agent is not the applicant, and that the applicant, not the agent, is responsible for activities conducted under a ROW grant.

Illustration 1
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Sample – Newspaper Notice