Appendix O

Eminent Domain

Eminent Domain

Power of the government to take private property for a public purpose, even if the property owner objects. Sometimes called condemnation, taking or expropriation.

Fifth Amendment

- No person shall be deprived of property "without due process of law, nor shall private property be taken for ***public use***, without ***just compensation***."
- This is a limitation upon the exercise of the government's right of eminent domain.

Just Compensation

Generally, the fair market value of the taken property as of the time of the taking.

Public Use

Traditionally, includes roads, parks, reservoirs, schools, hospitals, military bases or other public buildings. Government may also transfer private property to private parties, often common carriers, who make the property available for the public's use - such as with a railroad, a public utility, or a stadium.

Public Use

Government may ***not*** use its eminent domain power to take property of one private party for ***sole purpose of transferring it to another private party***, even if first party is paid just compensation.

Public Use - *Rational basis test*

Court defines "public purpose" needed to justify exercise of eminent domain power broadly, reflecting longstanding policy of judicial deference to legislative judgments in this field.

Whether in fact the taking and project will accomplish its public purpose objectives is not the question: the constitutional requirement is satisfied if the Legislature rationally could have believed that the Act would promote its objective.

Public Use

Berman v. Parker (1954) – constitutional authority to take and raze blighted structures, in order ***to eliminate slum and blight*** in the Southwest Washington area. After the taking, the court held, the taken and razed land could be transferred to private redevelopers who would construct condos, private office buildings and a shopping center.

Public Use

Hawaii Housing Authority v. Midkiff (1984) - approved the use of eminent domain to transfer a land lessor's title to its tenants who owned and occupied homes built on the leased land. The public purpose was ***to break up a housing oligopoly***, and thereby ***lower or stabilize home prices***.

Public Use

Kelo v. City of New London (2005) - affirmed city's authority to take non-blighted private property by eminent domain, and then transfer it to a private developer to carry out ***comprehensive development plan*** for ***economic development*** purposes, specifically ***increasing municipal revenues***.

Public Use - *Pretext defense*

Landowner claim/defense that a taking is unconstitutional because, notwithstanding declared public purposes, government's alleged actual sole purpose is to transfer property to another private party.

Public Use - *Pretext defense*

Franco v. NCRC (D.C. 2005) – landowner entitled to court determination on the merits where he sufficiently pleaded a plausible claim (enough to raise above the speculative level) that government's purpose was improper.

Public Use - *Pretext defense*

99 Cents Only Stores v. Lancaster Redevelopment Agency

(2001)

Costco requested that Lancaster take 99 Cents Only Store lease & transfer to Costco

Court rejected Lancaster's proffered public purpose to prevent the "reestablishment of blight."

Public Use - *Pretext defense*

Goldstein v. Pataki (2d Cir. 2008)
landowners argued that the developer is the sole beneficiary of the Project and that the public uses stated by government are 'pretexts' advanced by "corrupt and coopted state officials." Argument based on:

(1) the "acknowledged fact" that the developer was the impetus behind the Project, as well as its principal planner,

(2) "departures from convention in the process" by which the government accepted the developer's bid to develop the land,

(3) the "public uses proffered . . . were *post hoc* justifications," and

(4) the government "engaged in a sham 'public' review process whose outcome was predetermined long before."

Statutory authority required

Legislature possesses eminent domain power, condemnation may only be carried out in compliance with authority granted by legislature.

§ 16-1311. Condemnation proceedings by District of Columbia

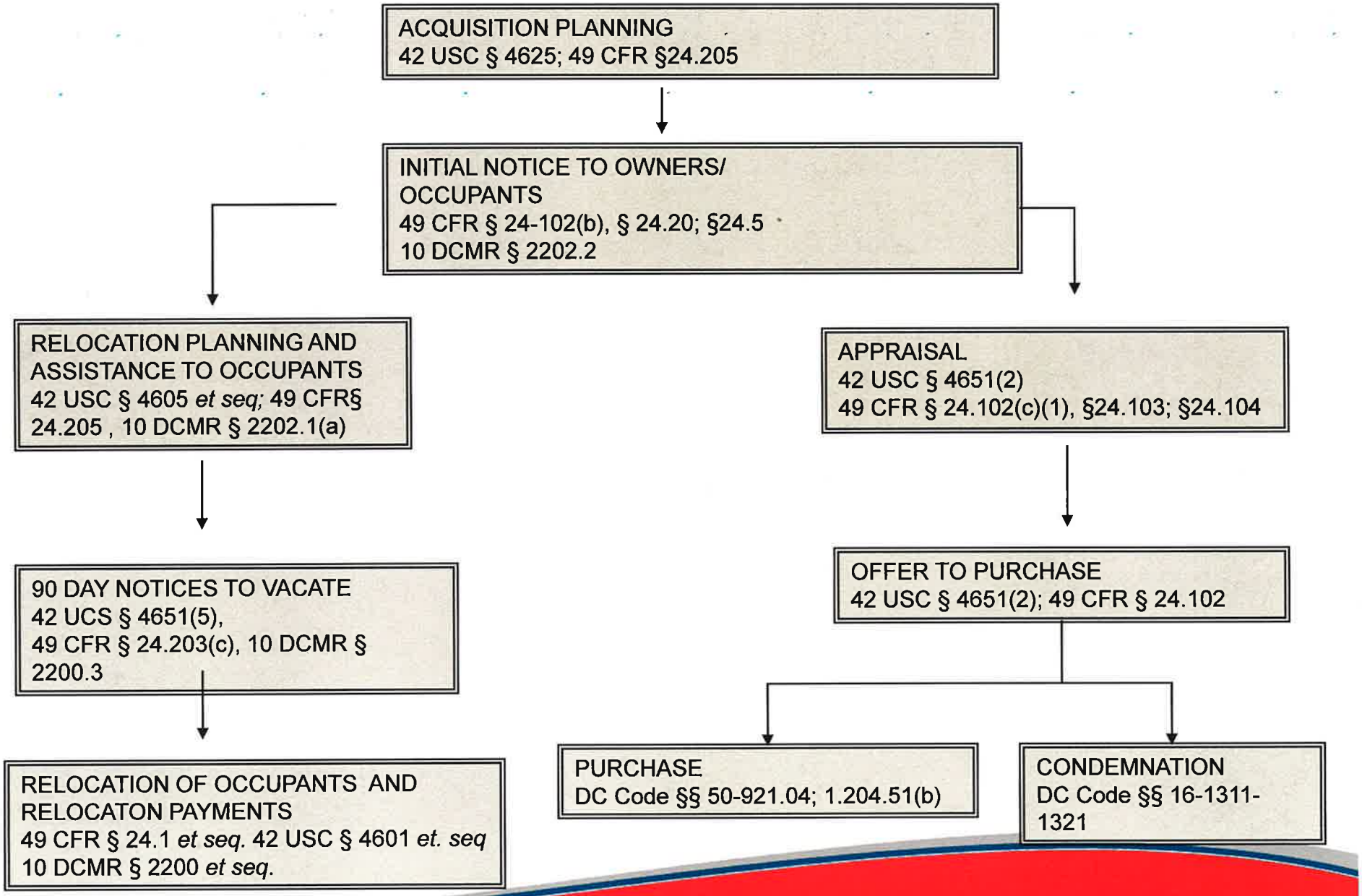
When real property in the District of Columbia is needed by the Mayor of the District of Columbia for sites of ***schoolhouses, fire or police stations, rights-of-way for roads, highways, streets and alleys or parts thereof, rights-of-way for water mains or sewers, or any other authorized municipal use***, and that property cannot be acquired by purchase from the owners thereof at a price satisfactory to the officers of the District authorized to negotiate for the property, a complaint may be filed in the Superior Court of the District of Columbia in the name of the District of Columbia for the condemnation of the property or rights-of-way and the ascertainment of its value.

Statutory authority required

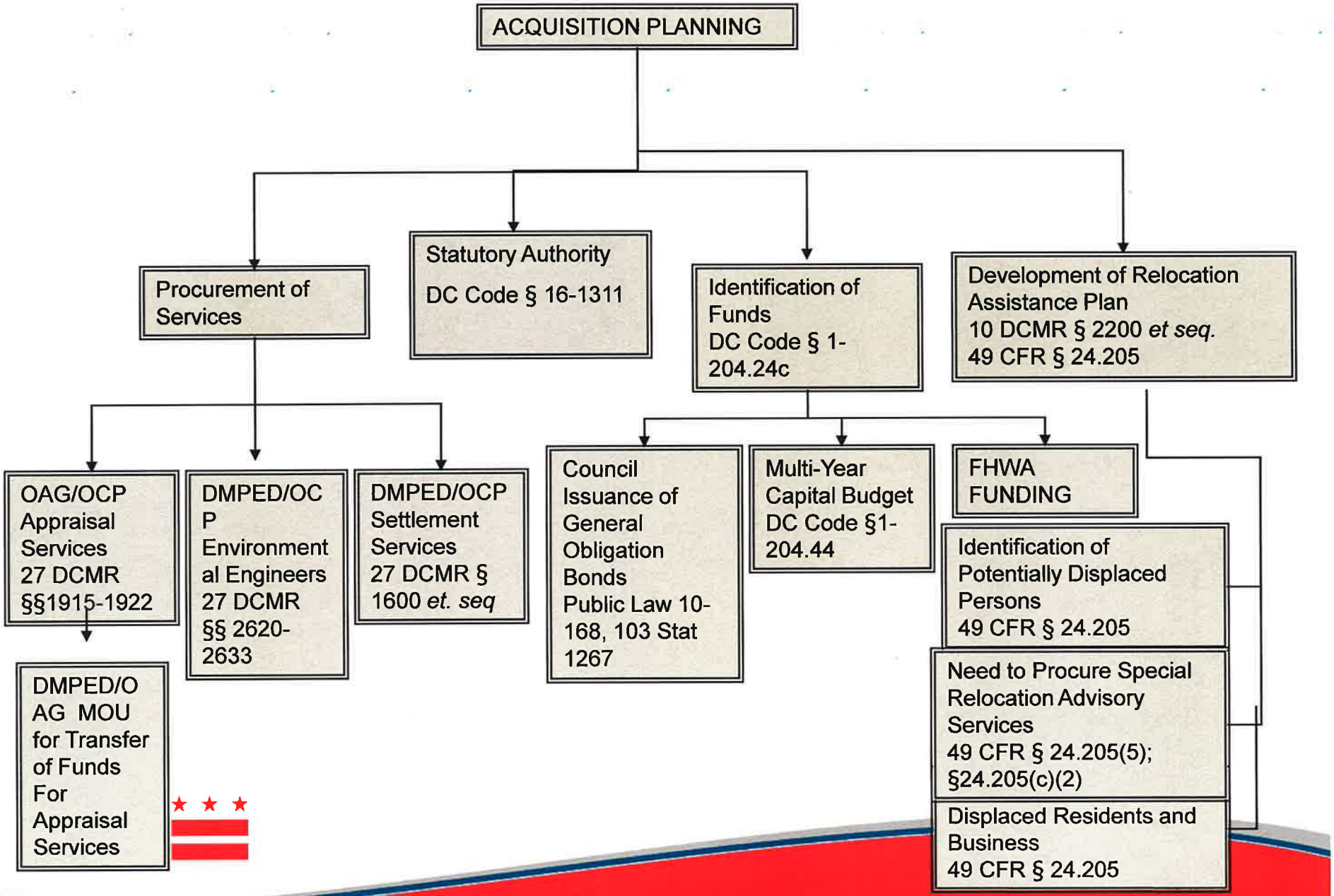
Courts strictly construe eminent domain authority statutes, and interpret “any other authorized municipal use” as reserving to the legislature the discretion and power to direct as to all other municipal purposes.

In other words, if it’s not on the list, you need another statute

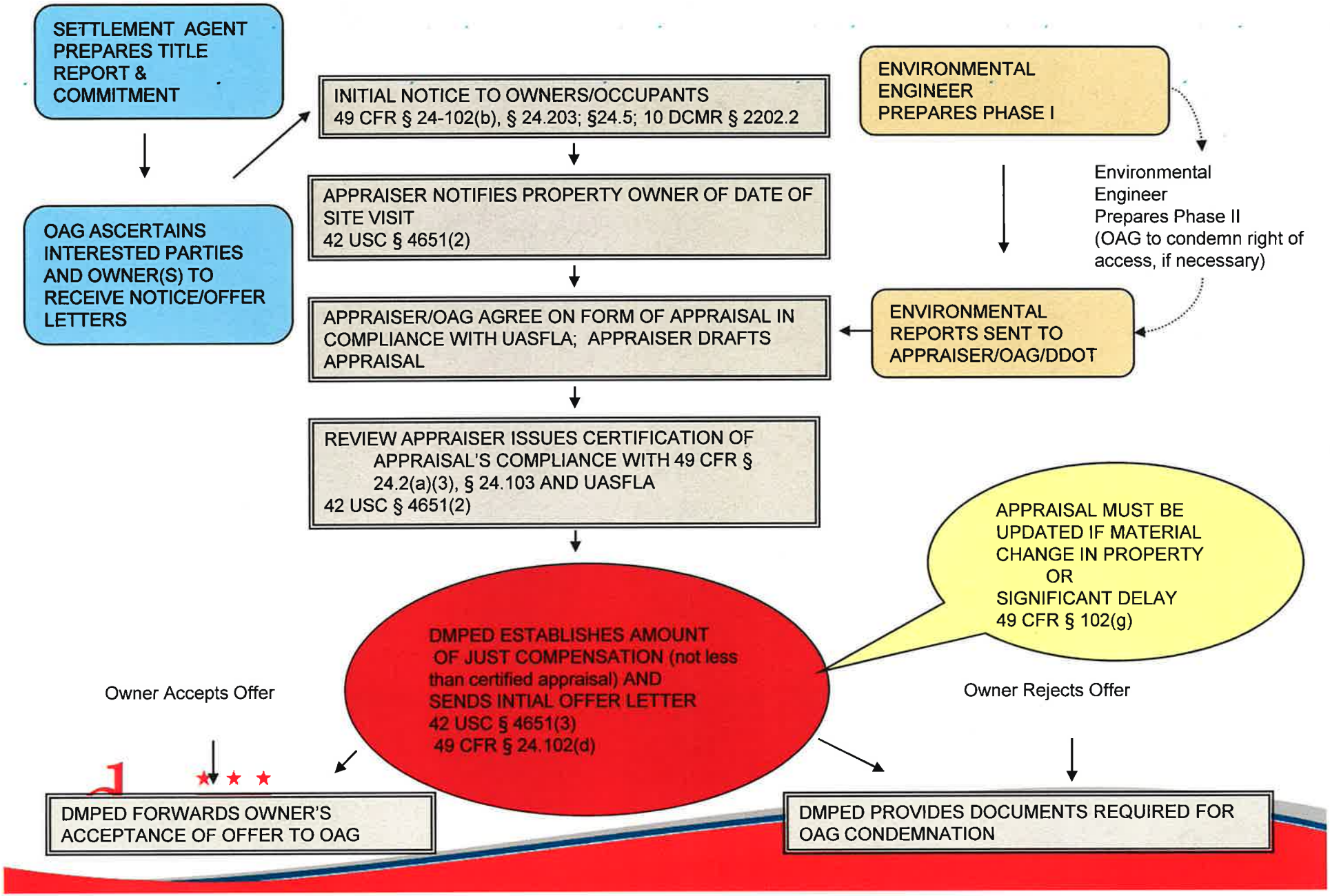
PROPERTY ACQUISITION FLOW CHART



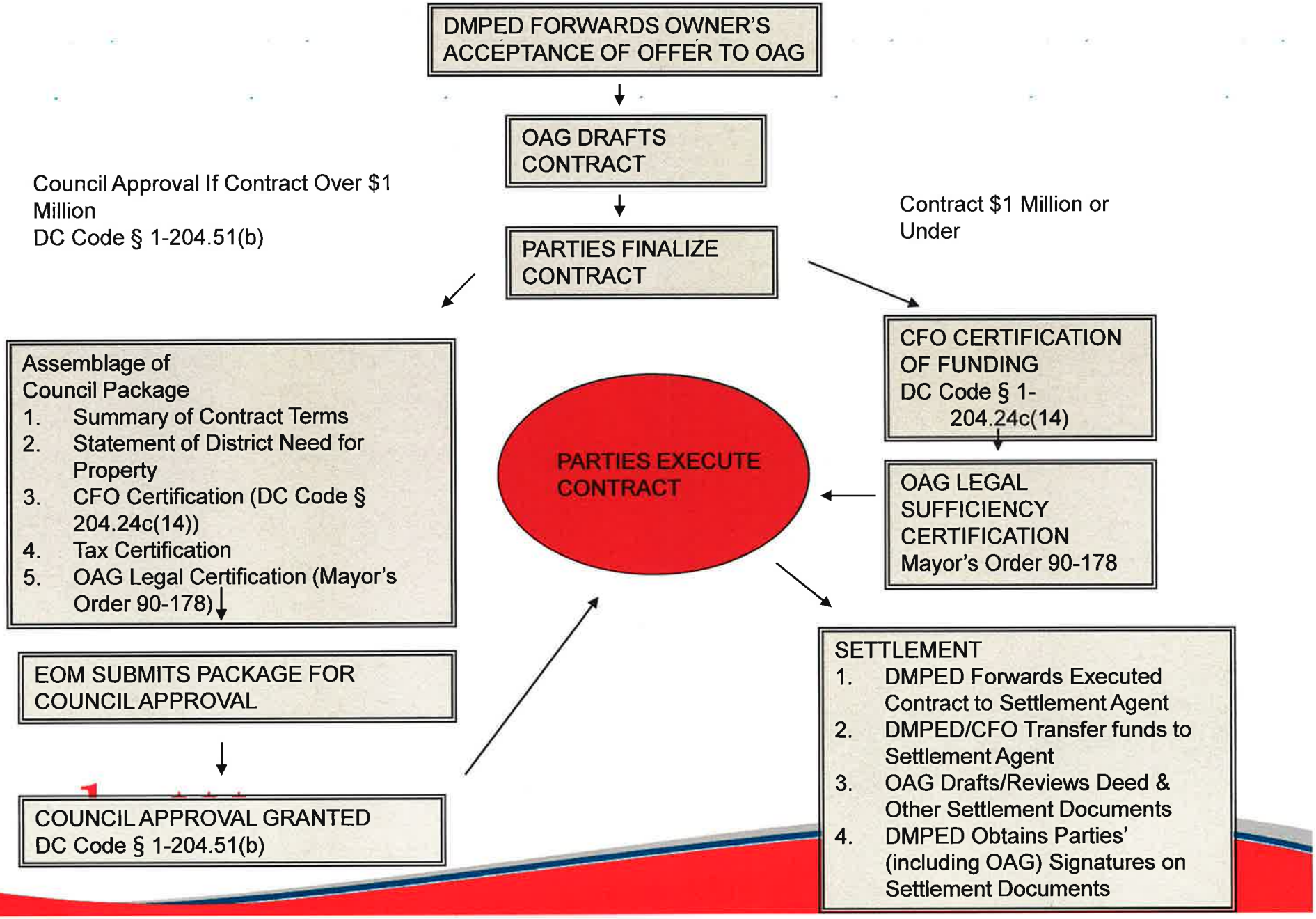
ACQUISITION PLANNING



INITIAL NOTICE, APPRAISAL, AND INITIAL OFFER PROCESS



ACQUISITION BY PURCHASE



ACQUISITION BY CONDEMNATION

DMPED FORWARDS TO OAG:
1. Appraisal and Review Appraiser's Certification of Just Compensation
2. DMPED Initial Offer Letter and All Other Negotiation Documentation
3. All other Documentation Relating to Acquisition
4. Description and Plat of Property to be Condemned

OAG DRAFTS
1. Complaint in Condemnation (Sup. Ct. Civ. R. 71A; DC Code § 16-1311)
2. Notice of Condemnation (Sup. Ct. Civ. R. 71A)
3. Declaration of Taking (DC Code § 16-1314)

DMPED/OCFO TRANSFER OF FUNDS TO CLERK OF SUPERIOR COURT
Sup. Ct. Civ. R. 71A(j)

MAYOR/DMPED EXECUTE DECLARATION OF TAKING

OAG FILES COMPLAINT, NOTICE OF CONDEMNATION AND DECLARATION OF TAKING IN DC SUPERIOR COURT
DC Code § 16-1311- 1321
Sup. Ct. Civ. R. 71A

d.

Public Use: Baseball v. Skyland

- Public stadium
- District-owned property
- Damages liability risk minimal
- Clear title not required to begin demo & construction

- Econ. Development
- District to convey title to developer who then demos and develops
- Vulnerable to defenses – higer damages liability risk
- Title clouded by landowners defenses to taking