

# Property Taking Cases Require Careful Estimated Just Compensation Distributions

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Given the various and often divergent interests of the parties involved, title agents must act cautiously when dealing with mortgages in property taking situations that require agencies to collect and distribute Estimated Just Compensation (EJC) funds.

The Uniform Condemnation Procedures Act (UCPA), MCL 213.51, allows for a public or private agency to condemn or exercise eminent domain over real or personal property.

The UCPA requires an agency taking property to put an EJC in an escrow account, typically at a title insurance company, before taking the property. If the agency is taking portions of multiple properties for the same project, only one EJC escrow account is required, which will be divided among the various parties who hold an interest in the respect properties.

Many times there is a first position lien holder, such as a bank or lender that holds a mortgage. The bank protects its interest in the property by confirming the EJC and that it is distributed accordingly.

Most mortgages include a clause providing a specific formula to distribute the EJC proportionately to the bank and the borrower. It is crucial that the bank defend these actions before the EJC is distributed. Following is an example of a clause found in most Michigan mortgages:

**Assignment of Miscellaneous Proceeds: Forfeiture:** All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by the Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

PROPERTY TAKING CASES REQUIRE CAREFUL ESTIMATED JUST COMPENSATION DISTRIBUTIONS Cont.

There are several issues title insurance professionals must know when dealing with parties making claims in EJC distribution cases.

Typically, attorneys defending the borrower(s) usually do not want the bank to assert their rights under the mortgage because the attorney's fee agreement may be a percentage of the EJC distributed to the borrower. If the bank obtains the majority of the EJC then the fee of the attorney representing the borrower will be less than anticipated.

It is important to note that the allocation of proceeds received by the bank for the EJC may be applied to the borrower's principle. Therefore, the bank does not profit from the proceeds.

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