

Negative Equity, Hardship Acquisitions & PISTOL

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2012 AASHTO Subcommittee on Right of Way and Utilities Conference

Marriott Waterfront Hotel – Portland, Oregon
April 29 to May 3, 2012



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Negative Equity Acquisitions

- Unique and historic market conditions with the majority of homeowners having a mortgage being in a negative equity situation.
- The Uniform Act requires that properties are appraised at current fair market value.
- An Administrative Settlement is used to bridge the gap between the FMV of the property and the debt owned on the property.

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Criteria to qualify

- Negative equity
 - Encumbered by mortgage or other qualified liens in an amount above the current market value
- Need to pay off mortgage a direct result of the project.
- Property Owners is not in default and continue to meet monthly payment obligations (default situations will be handled on a case by case basis)

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Negative Equity Acquisitions

- Displaced persons “shall not suffer disproportionate injuries as a result of programs and projects designed for the benefit of the public as a whole and to minimize the hardship of displacement on such persons” (42 USC 4621(b))
- FHWA’s temporary Programmatic Waiver allows NDOT to acquire homes with negative equity without impacting the owner’s replacement housing payment (RHP).

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Example Calculation Just Compensation with negative equity

\$220,000 (Home purchased in 2007)

\$150,000 (Just Compensation)

- \$200,000 (Mortgage Amount)

\$ -50,000 (Remaining Mortgage Amount)

\$50,000 (Administrative Settlement)

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Example Calculation of Replacement Housing Payment (RHP)

\$170,000 (Comparable Replacement Dwelling)
-\$150,000 (Just Compensation Offer)
\$ 20,000 (RHP Eligibility)

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Total Benefits for this example

The property owner receives:

- \$150,000 Just Compensation offer to be applied toward mortgage balance
- \$50,000 Administrative Settlement to be applied to remaining mortgage balance
- \$20,000 Replacement Housing Payment to purchase a replacement dwelling
- Plus relocation benefits



Example Calculation Just Compensation with negative equity

\$150,000 (Home purchased in 2005)

\$146,000 (Just Compensation)

- \$180,000 (Mortgage Amount)

\$ -34,000 (Negative equity)

\$34,000 (Administrative Settlement)

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Example Calculation of Replacement Housing Payment (RHP)

\$190,000 (Comparable Replacement Dwelling)
- \$146,000 (Just Compensation Offer)
\$ 44,000 (RHP Eligibility)

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Total Benefits for this example

The property owner receives:

- \$146,000 Just Compensation offer to be applied toward mortgage balance
- \$34,000 Administrative Settlement to be applied to remaining mortgage balance
- \$44,000 Replacement Housing Payment to purchase a replacement dwelling
- Plus relocation benefits



Hardship Acquisition Policy

- 1) Allows the Agency to acquire property prior to the Environmental document to be completed.
- 2) Owner must prove a Hardship based on need rather than want.
- 3) Property must have a CAD EX before you can move forward.

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Hardship Acquisition Policy

- 1) Must be in current STIP.
- 2) Compliance with 23 CFR 450 & 771.
- 3) Subject to provision of 23 USC 138.
- 4) National Historic Preservation Act.
- 5) Parcel must be incorporated into the final project.

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Hardship Acquisition Policy

Establishing a Hardship request based on property owners written submission:

- 1) Health, safety or financial reasons.
- 2) Document on inability to sell the property.



Hardship Acquisition Policy

Must establish a need VS a want.

Examples of a Hardship acquisition are:

- 1) Medical – health related factors.
- 2) Financial, personal, or business circumstances, legal factors, foreclosures.
- 3) Change of Employment, or job loss.
- 4) Housing not Meeting DSS (Decent, Safe and Sanitary)



PISTOL

PEOPLE'S INITIATIVE TO STOP THE TAKING OF OUR PROPERTY.

- Became Law November 25, 2008.
- Amended Nevada Constitution by creating section 22 of Article I.
- Contains 9 subsections.

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Article I Subsection:

- 1) Public use shall not include the direction or indirection transfer of any interest in property taken in an eminent domain proceeding from one private property to another private party. In all eminent domain actions, the government shall have the burden to prove public use.
- 2) In all eminent domain actions, prior to the government's occupancy, a property owner shall be given copies of all appraisals by the government and shall be entitled, at the property owner's election, to a separate and distinct determination by a district court jury, as to whether the taking is actually for a public use.



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- 3) If a public use is determined, the taken or damaged property shall be valued at its highest and best use without considering any future dedication requirements imposed by the government. If private property is taken for any proprietary governmental purpose, then the property shall be valued at the use to which the government intends to put the property, if such use results in a higher value for the land taken.

- 4) In all eminent domain actions, just compensation shall be defined as that sum of money, necessary to place the property owner back in the same position, monetarily, without any governmental offsets, as if the property had never been taken. Just compensation shall include, but is not limited to, compounded interest and all reasonable costs and expenses actually incurred.

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- 5) In all eminent domain actions where fair market value is applied, it shall be defined as the highest price the property would bring on the open market.
- 6) Property taken in eminent domain shall automatically revert back to the original property owner upon repayment of the original purchase price, if the property is not used within five years for the original purpose stated by the government. The five years shall begin running from the date of the entry of the final order of condemnation.
- 7) A property owner shall not be liable to the government for attorney fees or costs in any eminent domain action.

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- 8) For all provisions contained in this section, government shall be defined as the State of Nevada, its political subdivisions, agencies, any public or private agent acting on their behalf, and any public or private entity that has the power of eminent domain.
- 9) Any provision contained in this section shall be deemed a separate and free standing right and shall remain in full force and effect should any other provision contained in this section be stricken for any reason.

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