

THE UNIFORM CONDEMNATION PROCEDURES ACT
Act 87 of 1980

AN ACT to provide procedures for the condemnation, acquisition, or exercise of eminent domain of real or personal property by public agencies or private agencies; to provide for an agency's entry upon land for certain purposes; to provide for damages; to prescribe remedies; and to repeal certain acts and parts of acts.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980;—Am. 1988, Act 189, Eff. July 1, 1988.

The People of the State of Michigan enact:

213.51 Definitions.

Sec. 1. As used in this act:

(a) "Acquire" or "take" means to secure transfer of ownership of property to an agency by involuntary expropriation.

(b) "Acquisition" or "taking" means the transfer of ownership of property to an agency by involuntary expropriation.

(c) "Agency" means a public agency or private agency.

(d) "Appraisal" means an expert opinion of the value of property taken or damaged, or other expert opinion pertaining to the amount of just compensation.

(e) "Constructive taking" or "de facto taking" means conduct, other than regularly established judicial proceedings, sufficient to constitute a taking of property within the meaning of section 2 of article X of the state constitution of 1963.

(f) "Owner" means a person, fiduciary, partnership, association, corporation, or a governmental unit or agency having an estate, title, or interest, including beneficial, possessory, and security interest, in a property sought to be condemned.

(g) "Parcel" means an identifiable unit of land, whether physically contiguous or not, having substantially common beneficial ownership, all or part of which is being acquired, and treated as separate for valuation purposes.

(h) "Private agency" means a person, partnership, association, corporation, or entity, other than a public agency, authorized by law to condemn property.

(i) "Property" means land, buildings, structures, tenements, hereditaments, easements, tangible and intangible property, and property rights whether real, personal, or mixed, including fluid mineral and gas rights.

(j) "Public agency" means a governmental unit, officer, or subdivision authorized by law to condemn property.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980;—Am. 1996, Act 474, Imd. Eff. Dec. 26, 1996.

213.51a Short title.

Sec. 1a. This act shall be known and may be cited as "the uniform condemnation procedures act".

History: Add. 1980, Act 309, Imd. Eff. Dec. 4, 1980.

213.52 Standards provided; limitations; applicable laws and court rules; commencement of condemnation action; proof of taking of property; certificate of public necessity as condition of instituting judicial proceedings.

Sec. 2. (1) This act provides standards for the acquisition of property by an agency, the conduct of condemnation actions, and the determination of just compensation. It does not confer the power of eminent domain, and does not prescribe or restrict the purposes for which or the persons by whom that power may be exercised. All laws and court rules applicable to civil actions shall apply to condemnation proceedings except as otherwise provided in this act.

(2) If property is to be acquired by an agency through the exercise of its power of eminent domain, the agency shall commence a condemnation action for that purpose. An agency shall not intentionally make it necessary for an owner of property to commence an action, including an action for constructive taking or de facto taking, to prove the fact of the taking of the property.

(3) If a private agency is required by law to secure a certificate of public necessity from the public service commission or other public agency before it may acquire property, the private agency shall not institute judicial proceedings to acquire the property until it has secured the required certificate.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980.

213.53 Fluid mineral and gas rights.

Sec. 3. Fluid mineral and gas rights shall be considered excluded from an instrument by which an agency acquires an interest in land unless specifically included in the instrument. The exercise of the fluid mineral and gas rights, as permitted by law, shall not interfere with the use of the property acquired for a public purpose.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980.

213.54 Payment of just compensation for property if practical value or utility of remainder destroyed; zoning variance; entry upon property; purpose; notice; restitution for actual damages; "actual damage" defined; civil action for order permitting entry; contents of complaint; granting limited license for entry; terms; manner of entry under subsection (3); "environmental inspection" defined.

Sec. 4. (1) If the acquisition of a portion of a parcel of property actually needed by an agency would destroy the practical value or utility of the remainder of that parcel, the agency shall pay just compensation for the whole parcel. The agency may elect whether to receive title and possession of the remainder of the parcel. The question as to whether the practical value or utility of the remainder of the parcel of property is in fact destroyed shall be determined by the court or jury and incorporated in its verdict.

(2) If the acquisition of a portion of a parcel of property actually needed by an agency would leave the remainder of the parcel in nonconformity with a zoning ordinance, the agency, before or after acquisition, may apply for a zoning variance for the remainder of the parcel. In determining whether to grant the zoning variance, the governmental entity having jurisdiction to grant the variance shall consider the potential benefits of the public use for which the property would be acquired, in addition to those criteria applicable under the relevant zoning statute, ordinance, or regulation. The agency must actually acquire the portion of the parcel of property for the proposed public use for the zoning variance to become effective for the remainder. If a variance is granted under this subsection, the property shall be considered by the governmental entity to be in conformity with the zoning ordinance for all future uses with respect to the nonconformity for which that variance was granted. However, if the property was also nonconforming for other reasons, the grant of that variance has no effect on the status of those other preexisting nonconformities. An owner shall not increase the nonconformity for which a variance is granted under this section without the consent of the governmental entity. An agency has the same right to appeal action on a zoning variance as would a property owner seeking a zoning variance. This section does not deprive a governmental entity of its discretion to grant or deny a variance.

(3) An agency or an agent or employee of an agency may enter upon property before filing an action for the purpose of making surveys, measurements, examinations, tests, soundings, and borings; taking photographs or samplings; appraising the property; conducting an environmental inspection; conducting archaeological studies pursuant to section 106 of title I of the national historic preservation act, Public Law 89-665, 16 U.S.C. 470f; or determining whether the property is suitable to take for public purposes. The entry may be made upon reasonable notice to the owner and at reasonable hours. An entry made pursuant to this subsection shall not be construed as a taking. The owner or his or her representative shall be given a reasonable opportunity to accompany the agency's agent or employee during the entry upon the property. The agency shall make restitution for actual damage resulting from the entry, which may be recovered by special motion before the court or by separate action if an action for condemnation has not been filed. The term "actual damage" as used in this subsection does not include, and an agency shall not make restitution for, response activity, as defined in section 20101 of part 201 (environmental remediation) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being section 324.20101 of the Michigan Compiled Laws, or diminution in the value or utility of a parcel that is caused by the discovery of information as the result of a survey, an appraisal, a measurement, photography, or an environmental inspection made pursuant to this section.

(4) If reasonable efforts to enter under subsection (3) have been obstructed or denied, the agency may commence a civil action in the circuit court in the county in which the property or any part of the property is located for an order permitting entry. The complaint shall state the facts making the entry necessary, the date on which entry is sought, and the duration and the method proposed for protecting the defendant against damage. The court may grant a limited license for entry upon such terms as justice and equity require, including the following:

- (a) A description of the purpose of the entry.
- (b) The scope of activities that are permitted.
- (c) The terms and conditions of the entry with respect to the time, place, and manner of the entry.

(5) An entry made under subsection (3) or (4) shall be made in a manner that minimizes any damage to the property and any hardship, burden, or damage to a person in lawful possession of the property.

(6) As used in this section, "environmental inspection" means the testing or inspection including the taking of samples of the soil, groundwater, structures, or other materials or substances in, on, or under the property for the purpose of determining whether chemical, bacteriological, radioactive, or other environmental contamination exists and, if it exists, the nature and extent of the contamination.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980;—Am. 1988, Act 189, Eff. July 1, 1988;—Am. 1996, Act 58, Imd. Eff. Feb. 26, 1996;—Am. 1996, Act 474, Imd. Eff. Dec. 26, 1996.

213.55 Just compensation; amount; written notice to occupants; offer; review of appraisal; filing complaint for acquisition; "comparable replacement dwelling" defined; financial information; documents; determination of just compensation; items annexed to complaint; deposit; payment of additional amount for property which is principal residence; "taxable value" defined.

Sec. 5. (1) Before initiating negotiations for the purchase of property, the agency shall establish an amount that it believes to be just compensation for the property and promptly shall submit to the owner a good faith written offer to acquire the property for the full amount so established. At the same time, if the taking of the property might require relocation, the agency shall provide written notice to the occupants of the property stating that an eminent domain proceeding has commenced and outlining the occupants' basic legal rights in the process, including, but not limited to, the fact that any person who has a leasehold interest of less than 6 months is entitled to a \$3,500.00 moving allowance as provided under section 2 of 1965 PA 40, MCL 213.352, and that an individual who is a residential occupant may not be displaced until moving expenses or a moving allowance is paid as provided under 1965 PA 40, MCL 213.351 to 213.355, and the person has had a reasonable opportunity, not to exceed 180 days after the payment date of moving expenses or the moving allowance as provided under 1965 PA 40, MCL 213.351 to 213.355, to relocate to a comparable replacement dwelling. If there is more than 1 owner of a parcel, the agency may make a single, unitary good faith written offer. The good faith offer shall state whether the agency reserves or waives its rights to bring federal or state cost recovery actions against the present owner of the property arising out of a release of hazardous substances at the property and the agency's appraisal of just compensation for the property shall reflect such reservation or waiver. The amount shall not be less than the agency's appraisal of just compensation for the property. If the owner fails to provide documents or information as required by subsection (2), the agency may base its good faith written offer on the information otherwise known to the agency whether or not the agency has sought a court order under subsection (2). The agency shall provide the owner of the property and the owner's attorney with an opportunity to review the written appraisal, if an appraisal has been prepared, or if an appraisal has not been prepared, the agency shall provide the owner or the owner's attorney with a written statement and summary, showing the basis for the amount the agency established as just compensation for the property. If an agency is unable to agree with the owner for the purchase of the property, after making a good faith written offer to purchase the property, the agency may file a complaint for the acquisition of the property in the circuit court in the county in which the property is located. If a parcel of property is situated in 2 or more counties and an owner resides in 1 of the counties, the complaint shall be filed in the county in which the owner is a resident. If a parcel of property is situated in 2 or more counties and an owner does not reside in 1 of the counties, the complaint may be filed in any of the counties in which the property is situated. The complaint shall ask that the court ascertain and determine just compensation to be made for the acquisition of the described property. As used in this subsection, "comparable replacement dwelling" means any dwelling that is all of the following:

- (a) Decent, safe, and sanitary.
- (b) Adequate in size to accommodate the occupants.
- (c) Within the financial means of the individual.
- (d) Functionally equivalent.
- (e) In an area not subject to unreasonable adverse environmental conditions.
- (f) In a location generally not less desirable than the location of the individual's dwelling with respect to public utilities, facilities, services, and the individual's place of employment.

(2) During the period in which the agency is establishing just compensation for the owner's parcel, the agency has the right to secure tax returns, financial statements, and other relevant financial information for a period not to exceed 5 years before the agency's request. The owner shall produce the information within 21 business days after receipt of a written request from the agency. The agency shall reimburse the owner for actual, reasonable costs incurred in reproducing any requested documents, plus other actual, reasonable costs

of not more than \$1,000.00 incurred to produce the requested information. Within 45 days after production of the requested documents and other information, the owner shall provide to the agency a detailed invoice for the costs of reproduction and other costs sought. The owner is not entitled to a reimbursement of costs under this subsection if the reimbursement would be duplicative of any other reimbursement to the owner. If the owner fails to provide all documents and other information requested by the agency under this section, the agency may file a complaint and proposed order to show cause in the circuit court in the county specified in subsection (1). The court shall immediately hold a hearing on the agency's proposed order to show cause. The court shall order the owner to provide documents and other information requested by the agency that the court finds to be relevant to a determination of just compensation. An agency shall keep documents and other information that an owner provides to the agency under this section confidential. However, the agency and its experts and representatives may utilize the documents and other information to determine just compensation, may utilize the documents and other information in legal proceedings under this act, and may utilize the documents and other information as provided by court order. If the owner unreasonably fails to timely produce the documents and other information, the owner shall be responsible for all expenses incurred by the agency in obtaining the documents and other information. This section does not affect any right a party may otherwise have to discovery or to require the production of documents and other information upon commencement of an action under this act. A copy of this section shall be provided to the owner with the agency's request.

(3) In determining just compensation, all of the following apply:

(a) If an owner claims that the agency is taking property other than the property described in the good faith written offer or claims a right to compensation for damage caused by the taking, apart from the value of the property taken, and not described in the good faith written offer, the owner shall file a written claim with the agency stating the nature and substance of that property or damage. The owner's written claim shall provide sufficient information and detail to enable the agency to evaluate the validity of the claim and to determine its value. The owner shall file the claim within 90 days after the good faith written offer is made pursuant to section 5(1) or 180 days after the complaint is served, whichever is later, unless a later date is set by the court for reasonable cause. If the appraisal or written estimate of value is provided within the established period for filing written claims, the owner's appraisal or written estimate of value may serve as the written claim under this act. If the owner fails to timely file the written claim under this subsection, the claim is barred.

(b) The parties shall exchange the agency's updated appraisal reports, if any, and the owner's appraisal report within 90 days after the expiration of the period for filing written claims, unless a later date is set by the court in accordance with section 11(1) for reasonable cause. If the agency believes that the information provided by the owner is not sufficient to allow the evaluation of the claim, the agency may request additional information from the owner and, if that information is not provided, may ask the court to compel the owner to provide additional information to enable the agency to evaluate the validity of the claim and to determine its value. If the owner fails to provide sufficient information after being ordered to do so by the court, the court may assess an appropriate sanction in accordance with the Michigan court rules for failing to comply with discovery orders, including, but not limited to, barring the claim. In addition, the court also shall consider any failure to provide timely information when it determines the maximum reimbursable attorney fees under section 16.

(c) For any claim that has not fully accrued or is continuing in nature when the claim is filed, the owner shall provide information then reasonably available that would enable the agency to evaluate the claim, subject to the owner's continuing duty to supplement that information as it becomes available. The owner shall provide all supplementary information at least 90 days before trial, and the court shall afford the agency a reasonable opportunity for discovery once all supplementary information is provided and allow that discovery to proceed until 30 days before trial. For reasonable cause, the court may extend the time for the owner to provide information to the agency and for the agency to complete discovery. If the owner fails to provide supplementary information as required under this subdivision, the court may assess an appropriate sanction in accordance with the Michigan court rules for failing to comply with discovery orders, including, but not limited to, barring the claim. In addition, the court also shall consider any failure to provide timely supplemental information when it determines the maximum reimbursable attorney fees under section 16.

(d) After receiving a written claim from an owner, the agency may provide written notice that it contests the compensability of the claim, establish an amount that it believes to be just compensation for the claim, or reject the claim. If the agency establishes an amount it believes to be just compensation for the claim, the agency shall submit a good faith written offer for the claim. The sum of the good faith written offer for all claims submitted under this subsection or otherwise disclosed in discovery for all items of property or damage plus the original good faith written offer constitutes the good faith written offer for purposes of determining the maximum reimbursable attorney fees under section 16.

(e) If the owner files a claim that is frivolous or in bad faith, the agency is entitled to recover from the owner its actual and reasonable expenses incurred to evaluate the validity and to determine the value of the claim.

(f) A residential tenant's leasehold interest of less than 6 months in the property is not a compensable claim under this act.

(4) In addition to other allegations required or permitted by law, the complaint shall contain or have annexed to it all of the following:

(a) A plan showing the property to be taken.

(b) A statement of purpose for which the property is being acquired, and a request for other relief to which the agency is entitled by law.

(c) The name of each known owner of the property being taken.

(d) A statement setting forth the time within which motions for review under section 6 shall be filed; the amount that will be awarded and the persons to whom the amount will be paid in the event of a default; and the deposit and escrow arrangements made under subsection (5).

(e) A declaration signed by an authorized official of the agency declaring that the property is being taken by the agency. The declaration shall be recorded with the register of deeds of each county within which the property is situated. The declaration shall include all of the following:

(i) A description of the property to be acquired sufficient for its identification and the name of each known owner.

(ii) A statement of the estate or interest in the property being taken. Fluid mineral and gas rights and rights of access to and over the highway are excluded from the rights acquired unless the rights are specifically included.

(iii) A statement of the sum of money estimated by the agency to be just compensation for each parcel of property being acquired.

(iv) Whether the agency reserves or waives its rights to bring federal or state cost recovery actions against the present owner of the property.

(5) When the complaint is filed, the agency shall deposit the amount estimated to be just compensation with a bank, trust company, or title company in the business of handling real estate escrows, or with the state treasurer, municipal treasurer, or county treasurer. The deposit shall be set aside and held for the benefit of the owners, to be disbursed upon order of the court under section 8.

(6) If the property being taken is a principal residence for which an exemption from certain local taxation is granted under section 7cc of the general property tax act, 1893 PA 206, MCL 211.7cc, the agency is obligated to pay an additional amount to the owner or owners, which shall be deposited along with the amount estimated to be just compensation as provided in subsection (5). The additional amount shall be determined by subtracting the taxable value from the state equalized value, multiplying that amount by the total property tax millage rate applicable to the property taken, and multiplying that result by the number of years the owner or owners have owned the principal residence, but not more than 5 years.

(7) As used in this section, "taxable value" means that value determined under section 27a of the general property tax act, 1893 PA 206, MCL 211.27a.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980;—Am. 1985, Act 68, Imd. Eff. July 1, 1985;—Am. 1993, Act 308, Eff. Jan. 28, 1994;—Am. 1996, Act 474, Imd. Eff. Dec. 26, 1996;—Am. 2006, Act 439, Eff. Dec. 23, 2006.

213.56 Challenge by owner; motion to review necessity; hearing; determination by public agency binding on court; judicial determination of public necessity in acquisition by private agency; certificate by public service commission or federal agency as prima facie case; decision of court; final judgment; appeal; conclusive presumption of necessity.

Sec. 6. (1) Within the time prescribed to responsively plead after service of a complaint, an owner of the property desiring to challenge the necessity of acquisition of all or part of the property for the purposes stated in the complaint may file a motion in the pending action asking that the necessity be reviewed. The hearing shall be held within 30 days after the filing of the motion.

(2) With respect to an acquisition by a public agency, the determination of public necessity by that agency is binding on the court in the absence of a showing of fraud, error of law, or abuse of discretion.

(3) Except as otherwise provided in this section, with respect to an acquisition by a private agency, the court at the hearing shall determine the public necessity of the acquisition of the particular parcel. The granting of a permanent or temporary certificate by the public service commission or by a federal agency authorized by federal law to make determinations of public convenience and necessity as to condemnation constitutes a prima facie case that the project in furtherance of which the particular parcel would be acquired is required by the public convenience and necessity. The granting of a certificate of public convenience and

necessity by the public service commission pursuant to the electric transmission line certification act, Act No. 30 of the Public Acts of 1995, being sections 460.561 to 460.575 of the Michigan Compiled Laws, is binding on the court.

(4) The court shall render a decision within 60 days after the date on which the hearing is first scheduled.

(5) The court's determination of a motion to review necessity is a final judgment.

(6) Notwithstanding section 309 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.309 of the Michigan Compiled Laws, an order of the court upholding or determining public necessity or upholding the validity of the condemnation proceeding is appealable to the court of appeals only by leave of that court pursuant to the general court rules. In the absence of a timely filed appeal of the order, an appeal shall not be granted and the order is not appealable as part of an appeal from a judgment as to just compensation.

(7) If a motion to review necessity is not filed as provided in this section, necessity shall be conclusively presumed to exist and the right to have necessity reviewed or further considered is waived.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980;—Am. 1995, Act 31, Imd. Eff. May 17, 1995;—Am. 1996, Act 474, Imd. Eff. Dec. 26, 1996.

213.56a Reversal of agency's election of reservation of rights; revised good faith offer; stipulation to reverse agency election and waive cost recovery claim against owner.

Sec. 6a. (1) If an agency elects to reserve its rights to bring a state or federal cost recovery claim against an owner, the court upon motion of the owner, which must be filed within the time prescribed to responsively plead after service of a complaint, may reverse that election and order the agency to waive its claims, if the owner establishes by affidavit, and after an evidentiary hearing if requested by the agency in the time prescribed to provide an answer to a motion, 1 or more of the following circumstances exist with respect to the property:

(a) The property is a single family residence and has been used solely for residential purposes.

(b) The property is "agricultural property" as defined in section 20101 of part 201 (environmental remediation) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being section 324.20101 of the Michigan Compiled Laws, and the reservation of rights arises out of a release of hazardous substances caused by the application of a fertilizer, soil conditioner, agronomically applied manure, or a pesticide or a combination of these substances according to label directions and according to generally accepted agricultural and management practices, as defined by the Michigan right to farm act, Act No. 93 of the Public Acts of 1981, being sections 286.471 to 286.474 of the Michigan Compiled Laws.

(c) The owner is the only identified potentially responsible party, the extent of contamination and cost of remediation has been reasonably quantified, and the estimated cost of remediation does not exceed the agency's appraised value of the property.

(2) If the court reverses the agency's election of reservation of rights under subsection (1), the agency shall submit to the owner a revised good faith offer. The revised good faith offer shall be considered the good faith offer for purposes of sections 5 and 16.

(3) An agency and an owner may stipulate that the agency will reverse its election and waive its rights to bring a state or federal cost recovery claim against an owner.

History: Add. 1993, Act 308, Eff. Jan. 28, 1994;—Am. 1996, Act 58, Imd. Eff. Feb. 26, 1996.

213.57 Vesting of title in agency; vesting of right to just compensation; delay or denial.

Sec. 7. (1) If a motion to review necessity is not filed under section 6, the title to the property described in the petition shall vest in the agency as of the date on which the complaint was filed. The right to just compensation shall then vest in the persons entitled to the compensation and be secured as provided in this act. If the motion to review necessity is denied after a hearing and after any further right to appeal has terminated, title to the property shall also vest in the agency as of the date on which the complaint was filed or such other date as the court may set upon motion of the agency.

(2) Vesting of title in the agency shall not be delayed or denied because of any of the following:

(a) A motion filed under section 6a, challenging the agency's election to reserve its rights to bring federal or state cost recovery actions.

(b) A motion challenging the agency's escrow under section 8.

(c) An allegation that the agency should have offered a higher amount for the property.

(d) An allegation that the agency should have included additional property in its good faith written offer.

(e) Any other reason except a challenge to the necessity of the acquisition filed under section 6.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980;—Am. 1993, Act 308, Eff. Jan. 28, 1994;—Am. 1996, Act 474, Imd. Eff. Dec. 26, 1996.
Rendered Tuesday, February 23, 2016

213.58 Payment by escrowee of money deposited; funds remaining in escrow as security for remediation costs; court order; released funds; circumstances; reversal of agency's election under MCL 213.56a(1); applicability of subsections (2) and (3); "principal residence" defined.

Sec. 8. (1) Except as provided in subsections (2) and (3), if a motion for review under section 6 is not filed or is denied and the right to appeal has terminated or if interim possession is granted under section 9, the court shall order the escrowee to pay the money deposited under section 5 for or on account of the just compensation that may be awarded under section 13. Except as provided in subsections (2) and (3), if a motion for review under section 6 is not filed, the court shall, within 30 days, order the escrowee to pay the money deposited under section 5 for or on account of the just compensation that may be awarded under section 13. Upon the motion of any party, the court shall apportion the estimated compensation among the claimants to the compensation.

(2) Except as provided in subsection (5), if the agency reserves its rights to bring a state or federal cost recovery claim against an owner, under circumstances that the court considers just, the court may allow any portion of the money deposited under section 5 to remain in escrow as security for remediation costs of environmental contamination on the condemned parcel. An agency shall present an affidavit and environmental report establishing that the funds placed on deposit under section 5 are likely to be required to remediate the property. The amount in escrow shall not exceed the likely costs of remediation if the property were used for its highest and best use. This subsection does not limit or expand an owner's or agency's rights to bring federal or state cost recovery claims.

(3) Notwithstanding any order entered by the court requiring money deposited pursuant to section 5 to remain in escrow for the payment of estimated remediation costs of contaminated property, the funds in escrow, plus interest subject to section 15, shall be released among the claimants to the just compensation under circumstances that the court considers just, including any of the following circumstances:

(a) The court finds that the applicable statutory requirements for remediation have changed and the amount remaining in escrow is no longer required in full or in part to remediate the alleged environmental contamination.

(b) The court finds that the anticipated need for the remediation of the alleged environmental contamination is not required or is not required to the extent of the funds remaining on deposit.

(c) If the remediation of the property is not initiated by the agency within 2 years of surrender of possession pursuant to section 9 and the agency is unable to show good cause for delay.

(d) The costs actually expended for remediation are less than the estimated costs of remediation or less than the amount of money remaining in escrow.

(e) A court issues an order of apportionment of remediation responsibility.

(4) If the court orders the agency to reverse its election under section 6a(1), the court shall order the escrowee to pay the amount of the revised good faith written offer for or on account of the just compensation that may be awarded pursuant to section 13, and to pay the balance of the escrow to the agency. If the agency seeks possession before the court decides whether to reverse the agency's election or before submitting a revised good faith offer, the agency may request that the court order a portion of the escrow withheld in anticipation of a reduction in the revised good faith offer, with the balance to be paid by the escrowee for or on account of the just compensation that may be awarded pursuant to section 13. If the court denies the request to reverse the agency's election or when the revised good faith offer is submitted, the court shall order the escrowee to pay any unpaid portion of it for or on account of the owner and to pay any balance to the agency.

(5) Subsections (2) and (3) do not apply to money deposited under section 5 in escrow for the payment of just compensation for an owner's principal residence, if the principal residential structure is actually taken or the amount of the property taken leaves less property contiguous to the principal residential structure than the minimum lot size if the local governing unit has implemented a minimum lot size by zoning ordinance. This subsection does not limit or expand an owner's or agency's rights to bring federal or state cost recovery claims. As used in this subsection, "principal residence" means a principal residence for which an exemption from certain local taxation is granted under section 7cc of the general property tax act, 1893 PA 206, MCL 211.7cc.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980;—Am. 1993, Act 308, Eff. Jan. 28, 1994;—Am. 1996, Act 474, Imd. Eff. Dec. 26, 1996;—Am. 2006, Act 438, Eff. Dec. 23, 2006.

213.59 Surrender of possession of property to agency; time and terms; enforcement;

granting interim possession to private agency; indemnity bond; appeal; liability for damages; repayment as condition of order setting aside determination of public necessity; delay or denial; escrow payment; relocation; "comparable replacement dwelling" defined.

Sec. 9. (1) If a motion for review under section 6 is not filed, upon expiration of the time for filing the motion for review, or, if a motion for review is filed, upon final determination of the motion, the court shall fix the time and terms for surrender of possession of the property to the agency and enforce surrender by appropriate order or other process. The court also may require surrender of possession of the property after the motion for review filed under section 6 has been heard, determined and denied by the circuit court, but before a final determination on appeal, if the agency demonstrates a reasonable need.

(2) If interim possession is granted to a private agency, the court, upon motion of the owner, may order the private agency to file an indemnity bond in an amount determined by the court as necessary to adequately secure just compensation to the owner for the property taken.

(3) If an order granting interim possession is entered, an appeal from the order or any other part of the proceedings shall not act as a stay of the possession order. An agency is liable for damages caused by the possession if its right to possession is denied by the trial court or on appeal.

(4) Repayment of all sums advanced shall be a condition precedent to entry of a final order setting aside a determination of public necessity.

(5) Although the court shall not order possession to be surrendered to the agency before it orders that the escrow be distributed under section 8(1) or (4) or retained under section 8(2), the court shall not delay or deny surrender of possession because of any of the following:

(a) A motion filed pursuant to section 6a, challenging the agency's decision to reserve its rights to bring federal or state cost recovery actions.

(b) A motion challenging the agency's escrow under section 8.

(c) An allegation that the agency should have offered a higher amount for the property.

(d) An allegation that the agency should have included additional property in its good faith written offer.

(e) Any other reason except a challenge to the necessity of the acquisition filed under section 6.

(6) The payment of escrow, as ordered under subsection (5), must be made no later than 30 days before physical dispossession. If there is a dispute after the payment is made, the dispute shall be resolved at an apportionment hearing held before physical dispossession.

(7) The following special provisions apply if the surrender of possession of property pursuant to the transfer of title to the property in condemnation proceedings requires the relocation of the owner or another occupant:

(a) If the surrender or possession of property requires the relocation of any individual who occupies a residential dwelling on the property, the individual shall not be required to move from his or her dwelling unless he or she has had a reasonable opportunity not to exceed 180 days after the payment date of moving expenses or the moving allowance provided under 1965 PA 40, MCL 213.351 to 213.355, to relocate to a comparable replacement dwelling.

(b) However, if the agency is complying with applicable federal regulations and procedures regarding payment of compensation or relocation requirements, those federal regulations and procedures take precedence over any conflicting provisions in this section.

(8) As used in this section, "comparable replacement dwelling" means any dwelling that is all of the following:

(a) Decent, safe, and sanitary.

(b) Adequate in size to accommodate the occupants.

(c) Within the financial means of the individual.

(d) Functionally equivalent.

(e) In an area not subject to unreasonable adverse environmental conditions.

(f) In a location generally not less desirable than the location of the individual's dwelling with respect to public utilities, facilities, services, and the individual's place of employment.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980;—Am. 1993, Act 308, Eff. Jan. 28, 1994;—Am. 1996, Act 474, Imd. Eff. Dec. 26, 1996;—Am. 2006, Act 371, Eff. Dec. 23, 2006.

213.60 Order fixing date for hearing.

Sec. 10. Upon filing the complaint, the court shall enter an order fixing a day for a hearing which shall not be less than 21 days after the complaint is served. The order shall recite or have annexed to the order the names of the persons mentioned in the complaint as owners, reasonably describe the property to be taken, state the purpose of the complaint, and order the persons to appear before the court at the time fixed in the order for the hearing on the complaint.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980.

213.61 Scheduling order; exchange of appraisal reports; opportunity for discovery; appraisal report; testimony relating to value of real property; orders to facilitate compliance.

Sec. 11. (1) Upon motion of either party, the court shall issue a scheduling order to assure that the appraisal reports are exchanged and the parties are afforded a reasonable opportunity for discovery before a case is submitted to mediation, alternative dispute resolution, or trial.

(2) An appraisal report provided pursuant to this section shall fairly and reasonably describe the methodology and basis for the amount of the appraisal. If the testimony or opinion of a person relating to the value of real property would require a license under article 26 of the occupational code, Act No. 299 of the Public Acts of 1980, being sections 339.2601 to 339.2637 of the Michigan Compiled Laws, the appraisal shall comply with section 2609 of Act No. 299 of the Public Acts of 1980, being section 339.2609 of the Michigan Compiled Laws, and the standards adopted under section 2609 of Act No. 299 of the Public Acts of 1980 and the person shall not be permitted to testify or otherwise render an opinion relating to the value of real property unless the person is licensed under that article. An owner is not required to be licensed or to comply with professional appraisal standards to testify to the value of the owner's property.

(3) The court may issue orders to facilitate compliance with this section, including but not limited to orders to require mutual simultaneous exchange of the agency's updated appraisal report, if any, and the owner's appraisal report. If an appraisal report has not been provided pursuant to this section, the appraisal report shall not be considered in mediation or alternative dispute resolution proceedings unless specifically authorized by court order. If an appraisal report has not been provided pursuant to this section, the court may bar the taking of appraisal testimony from the appraisal expert, unless the court finds good cause for the failure and finds that the interests and opportunity of the other party to prepare have not been prejudiced.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980;—Am. 1996, Act 474, Imd. Eff. Dec. 26, 1996.

213.62 Just compensation; trial by jury.

Sec. 12. (1) A plaintiff or defendant may demand a trial by jury as to the issue of just compensation pursuant to applicable law and court rules. The jury shall consist of 6 qualified electors selected pursuant to chapter 13 of Act No. 236 of the Public Acts of 1961, as amended, being sections 600.1301 to 600.1376 of the Michigan Compiled Laws, and shall be governed by court rules applicable to juries in civil cases in circuit court.

(2) Unless there is good cause shown to the contrary, there shall be a separate trial as to just compensation with respect to each parcel.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980.

213.63 Just compensation; verdict; division of award.

Sec. 13. The jury or the court shall award in its verdict just compensation for each parcel. After awarding the verdict, on request of any party, the court shall divide the award among the respective parties in interest, whether the interest is that of mortgagee, lessee, lienor, or otherwise, in accordance with proper evidence submitted by the parties in interest.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980.

213.63a Duplicative payment prohibited.

Sec. 13a. A person is not entitled to a payment in connection with the acquisition of all or part of that person's property under this act if that payment would be duplicative of any grant or other payment received under any state or federal statute or regulation.

History: Add. 1996, Act 474, Imd. Eff. Dec. 26, 1996.

213.64 Notes and exhibits to assist jury.

Sec. 14. To assist the jury in arriving at its verdict the court may allow the jury when it retires to take with it notes and any map, plan, or other exhibit admitted in the case as an exhibit.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980.

213.65 Interest on judgment amount.

Sec. 15. (1) The court shall award interest on the judgment amount or part of the amount from the date of the filing of the complaint to the date that payment of the amount or part of the amount is tendered. However, if a portion of the judgment is attributable to damages incurred after the date of surrender of possession, the court shall award interest on that portion of the judgment from the date the damage is incurred.

(2) Interest shall be computed at the interest rate applicable to a federal income tax deficiency or penalty.

However, an owner remaining in possession after the date that the complaint is filed waives the interest for the period of the possession.

(3) If it is determined that a de facto acquisition occurred at a date earlier than the date of filing the complaint, interest awarded under this section shall be calculated from the earlier date.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980;—Am. 1996, Act 474, Imd. Eff. Dec. 26, 1996.

213.66 Witness fees and compensation; reimbursement of owner's attorney fees and other expenses; matters involving relocation of indigent person; "indigent person" defined.

Sec. 16. (1) Except as provided in this section, an ordinary or expert witness in a proceeding under this act shall receive from the agency the reasonable fees and compensation provided by law for similar services in ordinary civil actions in circuit court, including the reasonable expenses for preparation and trial.

(2) If the property owner, by motion to review necessity or otherwise, successfully challenges the agency's right to acquire the property, or the legal sufficiency of the proceedings, and the court finds the proposed acquisition improper, the court shall order the agency to reimburse the owner for actual reasonable attorney fees and other expenses incurred in defending against the improper acquisition.

(3) If the amount finally determined to be just compensation for the property acquired exceeds the amount of the good faith written offer under section 5, the court shall order reimbursement in whole or in part to the owner by the agency of the owner's reasonable attorney's fees, but not in excess of 1/3 of the amount by which the ultimate award exceeds the agency's written offer as defined by section 5. The reasonableness of the owner's attorney fees shall be determined by the court. If the agency or owner is ordered to pay attorney fees as sanctions under MCR 2.403 or 2.405, those attorney fee sanctions shall be paid to the court as court costs and shall not be paid to the opposing party unless the parties agree otherwise.

(4) If the agency settles a case before entry of a verdict or judgment, it may stipulate to pay reasonable attorney and expert witness fees.

(5) Expert witness fees provided for in this section shall be allowed with respect to an expert whose services were reasonably necessary to allow the owner to prepare for trial. For the purpose of this section, for each element of compensation, each party is limited to 1 expert witness to testify on that element of compensation unless, upon showing of good cause, the court permits additional experts. The agency's liability for expert witness fees shall not be diminished or affected by the failure of the owner to call an expert as a witness if the failure is caused by settlement or other disposition of the case or issue with which the expert is concerned.

(6) Except as provided in subsection (7), an agency is not required to reimburse attorney or expert witness fees attributable to an unsuccessful challenge to necessity or to the validity of the proceedings.

(7) In any matter under this act involving the relocation of an indigent person, other than a proceeding concerning the taking of property for the construction of a government-owned transportation project, the court may award reasonable attorney and expert witness fees attributable to an unsuccessful challenge to necessity or to the validity of the proceedings if the court finds that there was a reasonable and good faith claim that the property was not being taken for a public use. This subsection does not affect the right of an indigent person who successfully challenges the agency's right to acquire the property to recover attorney fees, ordinary or expert witness fees, and other expenses incurred in defending against the improper acquisition, as authorized by subsections (1) to (5). As used in this subsection, "indigent person" means an individual whose annual income is at or below 200% of the federal poverty guidelines published by the United States department of health and human services. This subsection does not apply after December 31, 2007.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980;—Am. 1996, Act 474, Imd. Eff. Dec. 26, 1996;—Am. 2006, Act 370, Eff. Dec. 23, 2006.

213.67 Discontinuance.

Sec. 17. The agency shall not discontinue the action after the granting of possession or vesting of title to the property taken. In case of a discontinuance, the agency, as a condition of discontinuance, shall pay the actual expenses, reasonable attorney fees, and actual damages to all the parties affected by the discontinuance as determined by the court.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980.

213.68 Reimbursement of expenses in evaluating agency's offer, preparing for trial, or negotiating settlement; enforcement of rights; filing claim.

Sec. 18. (1) If any agency acquires property without commencement of an action or abandons its efforts to acquire property after making the jurisdictional good faith written offer required by section 5 to the owners of the property and if the owners of the property reasonably relied upon the agency's action, the owners shall be

reimbursed by the agency for the reasonable expenses incurred in evaluating the agency's good faith written offer, in preparing for trial, or in negotiating a settlement, if those expenses would have been taxable as costs under section 16. For the purpose of this section, the jurisdictional written offer includes only written offers made under threat of institution of judicial proceedings to acquire the property.

(2) The rights created by this section may be enforced in a court having jurisdiction over claims for damages against the agency, or in a court in which an action under this act for the acquisition of the property could have been filed.

(3) The claim for reimbursement of expenses shall be filed within 1 year after the date on which the property is acquired or after the date on which notice of abandonment of the intention to acquire the property is mailed to the owner.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980;—Am. 1996, Act 474, Imd. Eff. Dec. 26, 1996.

213.69 Agreement on compensation or method of determining compensation.

Sec. 19. At any stage of the proceedings, the agency and the owner may agree upon all or part of the compensation, or upon a method for determining all or a part of the compensation, and may proceed to have those parts not agreed upon determined as provided in this act. The agency may make payment of a part of the compensation agreed upon, or enter into a contract to pay in the future based upon an agreed method of determining the compensation.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980.

213.70 Determination of fair market value.

Sec. 20. (1) A change in the fair market value before the date of the filing of the complaint which the agency or the owner establishes was substantially due to the general knowledge of the imminence of the acquiring by the agency, other than that due to physical deterioration of the property within the reasonable control of the owner, shall be disregarded in determining fair market value. Except as provided in section 23, the property shall be valued in all cases as though the acquisition had not been contemplated.

(2) The general effects of a project for which property is taken, whether actual or anticipated, that in varying degrees are experienced by the general public or by property owners from whom no property is taken, shall not be considered in determining just compensation. A special effect of the project on the owner's property that, standing alone, would constitute a taking of private property under section 2 of article X of the state constitution of 1963 shall be considered in determining just compensation. To the extent that the detrimental effects of a project are considered to determine just compensation, they may be offset by consideration of the beneficial effects of the project.

(3) The date of acquiring and of valuation in a proceeding pursuant to this act shall be the date of filing unless the parties agree to a different date, or unless a different date is determined by a counterclaim filed under section 21. The value of each parcel, and of a part of a parcel remaining after the acquisition of a part of the parcel, shall be determined with respect to the condition of the property and the state of the market on the date of valuation. However, if anticipated damages are avoided because of changes in the taking or project or changes in the actual effect of the taking or project on the remaining property, the property shall be valued as if those damages had not been anticipated.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980;—Am. 1996, Act 474, Imd. Eff. Dec. 26, 1996.

213.71 Counterclaim.

Sec. 21. A defendant may assert as a counterclaim, any claim for damages based on conduct by an agency which constitutes a constructive or de facto taking of property.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980.

Compiler's note: Former MCL 213.71 to 213.94, deriving from Act 124 of 1883 and pertaining to the taking of property by cities, villages, and counties, were repealed by Act 120 of 1967.

213.72 Lease, sale, or conveyance of property; terms; record.

Sec. 22. If property is acquired by an agency, the agency may lease, sell, or convey any portion not needed, on whatever terms the agency considers proper. A record of the leases and sales, showing the appraised value, the sale price, and other pertinent information, shall be kept in the office of the agency.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980.

Compiler's note: Former MCL 213.71 to 213.94, deriving from Act 124 of 1883 and pertaining to the taking of property by cities, villages, and counties, were repealed by Act 120 of 1967.

213.73 Enhancement in value as consideration in determining compensation; complaint; compensation; requiring agency to acquire portion claimed to be enhanced; burden of

proof.

Sec. 23. (1) Enhancement in value of the remainder of a parcel, by laying out, altering, widening, or other types of improvement; by changing the scope or location of the improvement; or by either action in combination with discontinuing an improvement, shall be considered in determining compensation for the taking.

(2) When enhancement in value is to be considered in determining compensation, the agency shall set forth in the complaint the fact that enhancement benefits are claimed and describe the construction proposed to be made which will create the enhancement. If the construction is not completed in substantial compliance with the plan upon which the agency based its claim of enhancement benefits, the owner may reopen the question of compensation within 1 year after the termination of construction. If the construction is not in substantial compliance, the owner is entitled to the difference between the value of the property as affected by the actual construction and the value of the property as it would have been, had construction been completed according to plan. The owner shall not recover more compensation than would have been payable if there was not a claim of enhancement benefits.

(3) Upon demand of the owner before trial, the court may require the agency to acquire that portion of the remainder of the tract which the agency claims to be enhanced if the agency claims enhancement. This subsection shall not apply if the agency withdraws its claim of enhancement benefits before trial.

(4) The agency has the burden of proof with respect to the existence of enhancement benefits.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980.

Compiler's note: Former MCL 213.71 to 213.94, deriving from Act 124 of 1883 and pertaining to the taking of property by cities, villages, and counties, were repealed by Act 120 of 1967.

213.74 Coercive actions prohibited.

Sec. 24. In order to compel an agreement on the price to be paid for the property, an agency may not advance the time of condemnation, defer negotiations or condemnation, defer the deposit of funds for the use of the owner, nor take any other action coercive in nature.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980.

Compiler's note: Former MCL 213.71 to 213.94, deriving from Act 124 of 1883 and pertaining to the taking of property by cities, villages, and counties, were repealed by Act 120 of 1967.

213.75 Commencement of actions for acquisition of property.

Sec. 25. All actions for the acquisition of property by an agency under the power of eminent domain shall be commenced pursuant to and be governed by this act. Amendments made to this act by the amendatory act that added this sentence shall apply to all good faith written offers made after the effective date of the amendatory act that added this sentence.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980;—Am. 1980, Act 309, Imd. Eff. Dec. 4, 1980;—Am. 1985, Act 68, Imd. Eff. July 1, 1985;—Am. 1996, Act 474, Imd. Eff. Dec. 26, 1996.

Compiler's note: Former MCL 213.71 to 213.94, deriving from Act 124 of 1883 and pertaining to the taking of property by cities, villages, and counties, were repealed by Act 120 of 1967.

213.76, 213.77 Repealed. 1996, Act 474, Imd. Eff. Dec. 26, 1996.

Compiler's note: The repealed sections pertained to repeal of MCL 213.26 to 213.41, 213.366 to 213.390, and 486.252a to 486.252j.