

TITLE 2: NATURAL RESOURCES  
DIVISION 4: LAND RESOURCES

**§ 4951. Equitable Adjustment.**

(a) In the event that a court with jurisdiction within the Commonwealth determines that a real property transaction is in violation of N.M.I. Const. art. XII, and such transaction is rendered void ab initio, then the court shall award an equitable adjustment to any person directly and adversely affected by the judgment who loses possession of or loses any interest in real property as a direct result of the judgment.

The equitable adjustment shall take the form of a judgment for money against the party or parties who have prevailed in the action, and shall be incorporated into the court's final judgment or order.

(b) In determining the amount of the equitable adjustment, the court shall take into account the following:

(1) The fair market value of the real property interest in question, not including improvements made subsequent to the transaction that is voided by the court;

(2) The actual cost, in money and other capital actually spent (including a reasonable assessment for unpaid labor invested in the property) of all improvements made to the real property in question subsequent to the transaction that is voided, including, but not limited to, buildings and other structures, landscaping, permit and development fees, infrastructure, grading, and clearing; plus

(3) The cost of money for all expenditures under subsection (b)(2) of this section which shall be set at a rate of five percent per year of the amount of the expenditure compounded annually from the date such expenditures were made.

(c) The court shall make such provisions for assuring recovery as it deems lawful, just and equitable, which may include (but not be limited to) placing a lien on the property in question in favor of the person adversely affected by the judgment, garnishing or assigning all income from the property to pay the equitable adjustment, giving beneficial possession of the property to the person adversely affected for some period of time, or any such other means as the court may consider lawful, equitable, appropriate, and effective in accomplishing the twin goals of returning fee simple ownership to the prevailing party and assuring reimbursement to the party adversely affected.

(d) The court may not deny recovery under this section unless the party prevailing in the action shows by clear and convincing evidence that the person adversely affected committed actual and deliberate fraud in acquiring the land and that such fraud was against the party prevailing in the action.

(e) *Retroactivity.* This section shall have retroactive effect upon all cases brought pursuant to N.M.I. Const. art. XII for the voiding of a real property transaction, excepting those cases which have been reduced to final judgment before October 29, 1993.

(f) *Severability.* If any subsection of this section should be declared invalid by a court of competent jurisdiction, the remainder of this section shall not be affected thereby.

**Source:** PL 8-32, § 3 (§ 4918), modified.