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A LAW CORPORATION

**OVERVIEW OF  
CALIFORNIA  
EMINENT DOMAIN LAW  
AND  
RELATED TAXATION ISSUES**

**PRESENTED TO:**

**CALIFORNIA CADASTRAL  
MAPPING ASSOCIATION**

**OCTOBER 16, 2008**

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## AN OVERVIEW OF CALIFORNIA EMINENT DOMAIN LAW AND RELATED TAX ISSUES

### I. CONDEMNATION BASICS

#### A. Basis of Power to Condemn Property

1. Fifth Amendment to U.S. Constitution
2. Article I, section 19 of the California Constitution
3. California Code of Civil Procedure section 1230.010, et seq.

#### B. Who May Condemn Property

1. A public entity
2. A quasi-public entity
3. Private persons - Civil Code sections 1001 & 1002

#### C. What Property May Be Condemned

1. Broad array of property interests
2. Partial acquisition

#### D. Why Property May Be Condemned

1. For a public use
2. Not for a purely private use

### II. EMINENT DOMAIN PROCEDURES

#### A. Preliminary Determinations

1. Is there a valid public purpose for the project/condemnation
2. Is there funding for the project
3. Is the property adequately defined

#### B. Obtain an Appraisal Of The Property

1. Must notify owner
  2. Owner has right to accompany the appraiser on his/her inspection
- C. Entity Must Make A Written Offer To And Negotiate With The Owner
1. The offer must be based upon and contain a written summary of the appraisal
  2. There is no time limit for the negotiation period
  3. The entity must pay the owner up to \$5,000 for his/her own appraisal
- D. Governing Board Must Adopt A Resolution of Necessity
1. The Resolution authorizes the filing of the eminent domain action
  2. The Board must make three findings and acknowledge the written offer was made to the owner
    - a. public interest and necessity require the project
    - b. project planned or located in the manner that will be most compatible with the greatest public good and the least private injury
    - c. the property described in the resolution is necessary for the proposed project
  3. The entity must also comply with the California Environmental Quality Act prior to adopting the Resolution
  4. Owner must receive notice of hearing and must have the opportunity to appear at hearing and address the Board
  5. The Board must approve Resolution by at least a 2/3 vote
- E. Counsel Files The Eminent Domain Litigation
1. A Complaint is filed in the County where the property is located
  2. All persons/entities with a potential interest are named as parties
  3. A lis pendens is also recording with the County
- F. The Entity Can Deposit The Amount of Probable Compensation (Appraised Value) With The State Treasurer
1. Not required unless the entity is seeking an order of possession

2. The date of deposit establishes the date of valuation
- G. The Entity Can Seek An Order of Pre-judgment Possession
1. Until recently, the entity could obtain possession with as little as 3 days notice
  2. Recent changes in the law have modified these provisions
    - a. A hearing now occurs 60 to 90 days after the entity files the motion for possession depending upon whether the property is occupied
    - b. The owner has 30 days to file an opposition to the motion
    - c. Possession can occur 10 to 30 days after the hearing depending upon whether the property is occupied.
    - d. The entity now has a heavier burden to show a need for early possession and that the balance of hardships favors the entity
- H. Condemnation Trial
1. The actual trial occurs at least a year after the litigation is filed and probably longer
  2. Prior to trial, the parties exchange appraisal information
  3. Shortly before trial, the parties exchange a final offer and demand
  4. A jury determines the amount of compensation and any damages *severance  
goodwill  
etc.*
  5. The Court determines all other issues including whether the entity has the legal ability to condemn the property.
- I. At The End Of The Trial, The Court Enters A Final Judgment
1. The owner can recover court cost and statutory interest
  2. The owner may be able to recover his/her attorney and expert fees, if the entity's final offer was unreasonable in light of the verdict
- J. The Entity Can Abandon The Condemnation
1. This can occur anytime until 30 days after the judgment is entered
  2. Upon abandonment, the entity will have to pay the owners' attorney and expert fees
- K. The Process Ends When The Court Enters A Final Order of Condemnation

1. The Final Order is entered once the entity pays the judgment
2. Title transfers when the entity records the Final Order

### III PROPERTY TAX ISSUES RELATED TO CONDEMNATION

#### A. As A General Rule, Property Owned By A Public Entity Is Exempt From Taxation

1. Property acquired by a public entity outside of its boundaries which was subject to taxation when acquired remains subject to taxation (Section 11)
2. Structures constructed on the property after it is acquired are taxable if they replace previously taxable improvements (Section 11)
3. Possessory interests held by non-governmental entities are subject to taxation (PI)

#### B. Upon Acquisition, The Assessor Must Apportion Taxes

1. Property taxes are apportioned as of the earliest of:
  - a. the date the conveyance or final order is recorded
  - b. the date of actual possession by the entity
  - c. the date the entity is authorized to take possession as authorized by court order
2. The entity is liable for taxes pro-rated from the date of apportionment
3. If property is exempt, the public entity is not liable to pay taxes
4. The owner is liable for taxes pro-rated prior to the date of apportionment and any such taxes can be paid from the award or purchase price
5. Any lien is extinguished and is attached to the proceeds constituting the purchase price or award
6. Unpaid taxes are also collectible from either the former owner or the public entity, but the former owner is liable to the public entity for any amount collected from it
7. Any party may apply to have the condemned property separately assessed

#### C. Property Tax Implications

1. Owner may be able to transfer the adjusted base year value of former property to replacement property

"Prop 3"  
P.T. Rule 462.500

2. The original and the replacement property must be comparable
  - a. Acquired property is deemed comparable if it is similar in size, utility and function to the property taken
    - i. Size is associated with value of the replacement property and not its physical characteristics (It must not exceed 120 percent of the award or purchase price for the property taken)
    - ii. The property is similar in utility and function if it is or is intended to be used in the same manner as the property taken
  - b. Actual displacement is required *orders for Possession rarely if ever recorded*
  - c. Title to both properties must be held in the same name
  - d. Acquisition must generally occur within 4 years of displacement

D. Various Tax Notice Provisions Relate To Condemnation Actions

1. The Court is required to give the auditor and tax collector (if both elected), or otherwise the tax collector, a description of the property to be condemned and direct that he/she certify tax information about the property
2. The entity must provide the Assessor and Auditor with notice of the condemnation and request an apportionment of taxes
3. The entity must provide the Tax Collector with notice of the project and potential acquisitions

IV. OTHER RELATED TOPICS

- A. A separate set of rules and procedures govern condemnation by federal entities
- B. An owner may also be entitled to relocation benefits
- C. The IRS also has rules relating to replacement property and treatment of condemnation awards
- D. If an entity takes property without following condemnation procedures, the owner can file an "inverse condemnation" action

*Other sources:  
Lis pendens  
recorded;  
court records  
on line;  
etc.*

*no remedy for  
failing to  
give notice  
doesn't  
defeat  
the con-  
demnation*

## SUMMARY OF CONDEMNATION PROCESS

fluid area; statutory changes  
recent and potentially ongoing.

SUMMARY OF CONDEMNATION PROCESS<sup>1</sup>

<u>ACTION</u>	<u>RESPONSIBLE PARTY</u>	<u>COMMENTS</u>
<p>1. Evaluate whether the preconditions on exercise of eminent domain power exist:</p> <ul style="list-style-type: none"> <li>a. Public interest and necessity require project;</li> <li>b. Project planned and located to be most compatible with greatest public good and least private injury;</li> <li>c. Property sought is necessary for project;</li> <li>d. Valid public purpose for the project;</li> <li>e. Statutory authority to condemn property for the project; and</li> <li>f. Project financing exists.</li> </ul>	<p>Staff, Legal counsel and Retained Consultants</p>	<p>Failure to meet preconditions can invalidate condemnation, and/or obligate the public entity for damages in inverse condemnation. While ability to determine financing will depend largely on how well defined the project is, this is a critical first step. If financing ultimately falls through, the public entity could face an inverse condemnation action which could obligate the public entity to pay damages.</p>
<p>2. Identify site and property interests to be acquired (in conjunction with step 1) and request early Government Code Section 65402 determination from planning re: consistency of project with General Plan; request litigation guarantee from title company. Prepare legal descriptions and maps of all property interests required for the project.</p>	<p>Staff, Legal counsel, Retained Consultants, Board (as necessary to approve contracts)</p>	<p>If section 65402 determination not made within 40 days of request, determination deemed made. Litigation Guarantee crucial to ensure that the agency negotiates with all title holders. (Litigation guarantee is similar to a Preliminary Report, but provides better protection in the event eminent domain is necessary.)</p>
<p>3. Begin CEQA study approval process; begin Phase I environmental assessment; retain appraiser, acquisition agents and any necessary environmental consultants.</p>	<p>Staff, Legal counsel, Retained Consultants, Board (as necessary to approve contracts)</p>	
<p>4. Send notice of intent to appraise and right to accompany to titleholders per preliminary title report and notice of acquisition procedures. (25 C.C.R. 6184 &amp; 6188.)</p>	<p>Staff, Retained Consultants</p>	
<p>5. Obtain right to enter property to appraise/inspect through:</p> <ul style="list-style-type: none"> <li>a. Written permission of titleholders (entity may need to indemnify for damages, etc.); or</li> <li>b. Court-ordered right of entry.</li> </ul>	<p>Staff, Legal counsel</p>	



<u>ACTION</u>	<u>RESPONSIBLE PARTY</u>	<u>COMMENTS</u>
6. Determine just compensation based on appraisal and review results of a Phase I environmental assessment.	Board, Staff	The Board must approve the amount of just compensation, or any offer prior to such approval must be conditional.
7. Make written offer to owner, including summary of basis for just compensation. Offer must include a brochure describing the agency's property acquisition policies. Agency must also offer to pay up to \$5,000 for owner to have his/her property appraised.	Staff, Retained Consultants	Must make written offer to owner prior to adopting resolution of necessity. The offer must comply with the format and content requirements of Government Code section 7267.2. First written offer constitutes "initiation of negotiation" and triggers beginning of relocation obligations (25 CCR 6008(n)). Must begin interviewing eligible parties "immediately following initiation of negotiations" (25 CCR 6048). Offer must be contingent on CEQA approval, and in no event should escrow close on negotiated purchase prior to completion of CEQA process.
8. Negotiation period.	Staff, Retained Consultants	Must allow a "reasonable period" (typically at least 30 days).
9. Begin preparation of relocation plan (as required if residents or business will be displaced), including plan to encourage citizen participation (25 CCR 6012). Provide basic benefit information to potential displaces (25 CCR 6046).	Staff, Retained Consultants	Plan must generally be prepared (25 CCR 6038) prior to proceeding with any phase of project which will displace resident or business. Must begin a relocation survey within 60 days of initiation of negotiations (25 CCR 6052). Plan must generally be available for public review and comment prior to adoption.
10. Finalize and approve environmental documents (i.e. certify EIR or adopt Negative Declaration/Mitigated Negative Declaration).	Board, Staff, Legal counsel, Retained Consultants	Must act on appropriate environmental documents prior to adoption of a resolution of necessity. (Can approve CEQA documents at same hearing approve resolution of necessity.) Negative Declaration must be circulated for at least 21 days (30 days if submitted to state clearinghouse) prior to hearing on Resolution of Necessity or (if written offer accepted) formal approval of sale. If EIR required, allow considerably longer time period (at least 6 months).
11. Obtain updated litigation guarantee. If appraisal is over 120 days old, obtain updated opinion from appraiser. If value has increased, make a revised offer to owner.	Staff, Legal counsel	

<u>ACTION</u>	<u>RESPONSIBLE PARTY</u>	<u>COMMENTS</u>
12. Prepare and distribute Notice of Intent to Adopt Resolution of Necessity.	Staff	Must be mailed to property owners at least 15 days prior to resolution of necessity hearing and inform the owner of his/her right to appear at the hearing.
13. Prepare staff report and record supporting adoption of Resolution of Necessity and make them available to public and property owner. Prepare draft Resolution of Necessity. Staff report/record must include an examination of alternatives and evidence supporting findings to be made in Resolution.	Staff, Legal counsel	Since judicial review of any right to take challenge will be based upon the administrative record before the Board, a detailed record and staff report in support of each requirement for the condemnation should be prepared. Staff can incorporate this material into its oral presentation at the resolution of necessity hearing.
14. Adopt Resolution of Necessity.	Board	Requires a 2/3 approval vote and certain findings (that the preconditions noted above exist). Additional findings required if property will not be used within seven years, the property is already being used by another public entity or the property is outside of the entity's boundaries.
15. File condemnation complaint; deposit probable compensation with State Treasurer (if desired).	Legal counsel	Complaint can be filed immediately after Resolution adopted; cannot seek Order of Possession without depositing probable compensation; the date of deposit will serve as the date of valuation for the property. The public entity must file the condemnation action within 6 months of adopting a resolution of necessity or it may face an inverse action by the landowner requiring the public entity to take the property or pay damages and possibly attorney fees. Must also notify the County tax collector, assessor and auditor of the legal action.

<u>ACTION</u>	<u>RESPONSIBLE PARTY</u>	<u>COMMENTS</u>
16. Obtain and serve Order of Possession (if desired).	Legal counsel	<p>Any time after deposit of Probable Compensation the agency can file a motion seeking an order for pre-judgment possession. Under new law effective in 2007, gaining possession of unoccupied property will likely take 75 to 110 days after motion is filed; Occupied property will likely take 130-180 days. Possession of property before judgment is not guaranteed. To obtain possession before judgment, the agency must establish that the hardship it will suffer from delay outweighs the hardship the occupant will suffer from being displaced, but law does not define hardship.</p> <p>90 days notice to vacate is generally required by relocation law, regardless of the date the City is entitled to take possession pursuant to an order of possession (25 CCR 6046). (Relocation and eminent domain laws are inconsistent in this respect.)</p>
17. Send notice to tax collector, auditor and assessor requesting apportionment of taxes once possession obtained. Apply to Court for order requesting tax collector provide current tax information	Legal counsel	Property is generally exempt from property taxation upon possession by the public entity. Delinquent taxes can be paid from the judgment amount.
18. Conduct written discovery as to challenges raised by property owner including disputes related to amount of compensation; depose fact and expert witnesses	Legal counsel	Generally occurs until 30 days prior to trial except for expert discovery.
19. Demand exchange of expert witnesses and valuation data	Legal counsel	Make demand no later than 10 days after selection of trial date; exchange data 90 days prior to commencement of trial unless parties agree to other date. Will need to obtain an updated appraisal based upon the established valuation date (i.e. date of deposit).

<u>ACTION</u>	<u>RESPONSIBLE PARTY</u>	<u>COMMENTS</u>
20. File and serve a final offer	Board, Legal counsel	Must file and serve 20 days prior to trial. If court ultimately finds offer was unreasonable, it can award costs and attorney's fees to property owner. Board approval typically required prior to making the offer. Prior to offer, the court will typically conduct a settlement conference and the parties can independently negotiate and engage in alternative dispute resolution such as mediation or arbitration.
21. Trial	Legal counsel, Retained Consultants	Typically occurs at least one year after filing the complaint; legal issues are resolved by the judge and the amount of compensation is determined by the jury. After trial, court enters a judgment.
22. File notice of appeal	Board, Legal counsel	60 days after notice of entry of judgment if any of the trial court's rulings are disputed.
23. Pay compensation as determined by the judgment	Staff	30 days after "final judgment." "Final judgment" occurs once the time for filing any challenges to the court's initial judgment has passed and any challenges have been resolved.
24. Obtain Order for Possession after Judgment and serve on owner and occupants if agency does not already possess the property.	Legal counsel	If possession was not obtained via motion early in the case, an order shall be issued ex parte after judgment is entered. The order must be served on owner 10 days before its effective date for unoccupied property and served on owners and occupants 30 days before it is effective on occupied property, and agency must deposit or pay full amount of judgment to defendants before taking possession.
25. Abandon the condemnation	Board, Legal counsel	Can abandon any time after filing the complaint or within 30 days of the final judgment; property owner can challenge abandonment; court may order payment of costs and attorney fees incurred by the property owner.
26. Obtain and record final order of condemnation transferring title to the public entity	Legal counsel	Upon application and after payment of compensation.

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i. **Caveats:**

- (a) The information contained herein is current through October 2008. Check with counsel for changes in the law that may have occurred subsequent to this date.
- (b) This outline represents only a summary of the critical events that must occur as part of the condemnation process. Each condemnation action is unique; the actions and the timing and sequence of events required in any particular condemnation proceeding must be determined on a case-by-case basis after close consultation with counsel and consultants.

**CONSTITUTION PROVISIONS AUTHORIZING**  
**CONDEMNATION**

## CONSTITUTION PROVISIONS AUTHORIZING CONDEMNATION

### United States Constitution – Fifth Amendment:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. [Emphasis added.]

### California Constitution:

ART. I, SEC. 19. (a) Private property may be taken or damaged for a public use and only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. The Legislature may provide for possession by the condemnor following commencement of eminent domain proceedings upon deposit in court and prompt release to the owner of money determined by the court to be the probable amount of just compensation.

(b) The State and local governments are prohibited from acquiring by eminent domain an owner-occupied residence for the purpose of conveying it to a private person.

(c) Subdivision (b) of this section does not apply when State or local government exercises the power of eminent domain for the purpose of protecting public health and safety; preventing serious, repeated criminal activity; responding to an emergency; or remedying environmental contamination that poses a threat to public health and safety.

(d) Subdivision (b) of this section does not apply when State or local government exercises the power of eminent domain for the purpose of acquiring private property for a public work or improvement.

(e) For the purpose of this section:

1. "Conveyance" means a transfer of real property whether by sale, lease, gift, franchise, or otherwise.
2. "Local government" means any city, including a charter city, county, city and county, school district, special district, authority, regional entity, redevelopment agency, or any other political subdivision within the State.
3. "Owner-occupied residence" means real property that is improved with a single-family residence such as a detached home, condominium, or townhouse and that is the owner or owners' principal place of residence for at least one year prior to the State or local government's initial written offer to purchase the property. Owner-occupied residence also includes a residential dwelling unit attached to or detached from such a single-family residence which provides complete independent living facilities for one or more persons.
4. "Person" means any individual or association, or any business entity, including, but not limited to, a partnership, corporation, or limited liability company.
5. "Public work or improvement" means facilities or infrastructure for the delivery of public services such as education, police, fire protection, parks, recreation, emergency medical, public health, libraries, flood protection, streets or highways, public transit, railroad, airports and seaports; utility, common carrier or other similar projects such as energy-related, communication-related, water-related and wastewater-related facilities or infrastructure; projects identified by a State or local government for recovery from natural disasters; and private uses incidental to, or necessary for, the public work or improvement.
6. "State" means the State of California and any of its agencies or departments.

**EMINENT DOMAIN LAW PROVISIONS RELATING TO**  
**PROPERTY TAXATION**



EMINENT DOMAIN LAW PROVISIONS RELATING TO PROPERTY TAXATION

Code of Civil Procedure:

§ 1260.250. Certification by auditor or tax collector; court order; judgment

(a) In a county where both the auditor and the tax collector are elected officials, the court shall by order give the auditor or tax collector the legal description of the property sought to be taken and direct the auditor or tax collector to certify to the court the information required by subdivision (c), and the auditor or tax collector shall promptly certify the required information to the court. In all other counties, the court shall by order give the tax collector the legal description of the property sought to be taken and direct the tax collector to certify to the court the information required by subdivision (c), and the tax collector shall promptly certify the required information to the court.

(b) The court order shall be made on or before the earliest of the following dates:

(1) The date the court makes an order for possession.

(2) The date set for trial.

(3) The date of entry of judgment.

(c) The court order shall require certification of the following information:

(1) The current assessed value of the property together with its assessed identification number.

(2) All unpaid taxes on the property, and any penalties and costs that have accrued thereon while on the secured roll, levied for prior tax years that constitute a lien on the property.

(3) All unpaid taxes on the property, and any penalties and costs that have accrued thereon while on the secured roll, levied for the current tax year that constitute a lien on the property prorated to, but not including, the date of apportionment determined pursuant to Section 5082 of the Revenue and Taxation Code or the date of trial, whichever is earlier. If the amount of the current taxes is not ascertainable at the time of proration, the amount shall be estimated and computed based on the assessed value for the current assessment year and the tax rate levied on the property for the immediately prior tax year.

(4) The actual or estimated amount of taxes on the property that are or will become a lien on the property in the next succeeding tax year prorated to, but not including, the date of apportionment determined pursuant to Section 5082 of the Revenue and Taxation Code or the date of trial, whichever is earlier. Any estimated amount of taxes shall be computed based on the assessed value of the property for the current assessment year and the tax rate levied on the property for the current tax year.

(5) The amount of the taxes, penalties, and costs allocable to one day of the current tax year, and where applicable, the amount allocable to one day of the next succeeding tax year, hereinafter referred to as the "daily prorate."

(6) The total of paragraphs (2), (3), and (4).

(d) If the property sought to be taken does not have a separate valuation on the assessment roll, the information required by this section shall be for the larger parcel of which the property is a part.

(e) The court, as part of the judgment, shall separately state the amount certified pursuant to this section and order that the amount be paid to the tax collector from the award. If the amount so certified is prorated to the date of trial, the order shall include, in addition to the amount so certified, an amount equal to the applicable daily prorate multiplied by the number of days commencing on the date of trial and ending on and including the day before the date of apportionment determined pursuant to Section 5082 of the Revenue and Taxation Code.

(f) Notwithstanding any other provision of this section, if the board of supervisors provides the procedure set forth in Section 5087 of the Revenue and Taxation Code, the court shall make no award of taxes in the judgment.

**§ 1268.410. Liability of plaintiff for ad valorem taxes, penalties and costs**

As between the plaintiff and defendant, the plaintiff is liable for any ad valorem taxes, penalties, and costs upon property acquired by eminent domain prorated from and including the date of apportionment determined pursuant to Section 5082 of the Revenue and Taxation Code.

**§ 1268.420. Collection of ad valorem taxes, penalties and costs; exempt property; dismissal of proceedings**

(a) Except as provided in subdivision (b):

(1) If the acquisition of property by eminent domain will make the property exempt property as defined in Section 5081 of the Revenue and Taxation Code, any ad valorem taxes, penalties, or costs on the property for which the plaintiff is liable pursuant to Section 1268.410 are not collectible.

(2) If the acquisition of property by eminent domain will not make the property exempt property as defined in Section 5081 of the Revenue and Taxation Code, the plaintiff shall be deemed to be the assessee for the purposes of collection of any ad valorem taxes, penalties, and costs on the property for which the plaintiff is liable pursuant to Section 1268.410.

(b) To the extent there is a dismissal or partial dismissal of the eminent domain proceeding, the amount of any unpaid ad valorem taxes, penalties, and costs on the property for which the plaintiff would be liable pursuant to Section 1268.410 until the entry of judgment of dismissal shall be awarded to the defendant. The amount awarded shall be paid to the tax collector from the award or, if unpaid for any reason, are collectible from the defendant.

**§ 1268.430. Payment by defendant of amount of plaintiff's liability; claim by defendant; time**

(a) If the defendant has paid any amount for which, as between the plaintiff and defendant, the plaintiff is liable under this article, the plaintiff shall pay to the defendant a sum equal to such amount.

(b) The amount the defendant is entitled to be paid under this section shall be claimed in the manner provided for claiming costs and at the following times:

(1) If the plaintiff took possession of the property prior to judgment, at the time provided for claiming costs.

(2) If the plaintiff did not take possession of the property prior to judgment, not later than 30 days after the plaintiff took title to the property.

**§ 1268.440. Refunds; exempt property; taxes subject to cancellation**

(a) If taxes have been paid on property that is exempt property as defined in Section 5081 of the Revenue and Taxation Code, the amount of the taxes that, if unpaid, would have been subject to cancellation under Article 5 (commencing with Section 5081) of Chapter 4 of Part 9 of Division 1 of the Revenue and Taxation Code shall be deemed to be erroneously collected and shall be refunded in the manner provided in Article 1 (commencing with Section 5096) of Chapter 5 of Part 9 of Division 1 of the Revenue and Taxation Code to the person who paid the taxes.

(b) The public entity shall be deemed to be the person who paid the taxes if the public entity reimbursed the defendant for the taxes under a cost bill filed in the eminent domain proceeding pursuant to Section 1268.430. A claim for refund of taxes filed by a public entity pursuant to this section shall contain a copy of the cost bill under which taxes were reimbursed or a declaration under penalty of perjury by the public entity that the taxes were reimbursed under a cost bill.

(c) Taxes paid on either the secured or unsecured roll may be refunded pursuant to this section.

**§ 1268.450. Separate valuation on assessment roll; application**

If property acquired by eminent domain does not have a separate valuation on the assessment roll, any party to the eminent domain proceeding may, at any time after the taxes on the property are subject to cancellation under Article 5 (commencing with Section 5081) of Chapter 4 of Part 9 of Division 1 of the Revenue and Taxation Code, apply to the tax collector for a separate valuation of the property in accordance with Article 3 (commencing with Section 2821) of Chapter 3 of Part 5 of Division 1 of the Revenue and Taxation Code notwithstanding any provision in that article to the contrary.

**STATUTORY PROVISIONS RELATING TO**  
**APPORTIONMENT OF TAXES**

## STATUTORY PROVISIONS RELATING TO APPORTIONMENT OF TAXES

### Revenue And Taxation Code:

#### § 5081. Exempt property

As used in this article, “exempt property” means:

- (a) Property acquired by the United States that becomes exempt from taxation under the laws of the United States.
- (b) Property acquired by the state or by a county, city, school district, or other public entity, that becomes exempt from taxation under the laws of the state.

#### § 5082. Date of apportionment

For purposes of this article, the “date of apportionment” is the earliest of the following times:

- (a) The date the conveyance to the acquiring entity or the final order of condemnation is recorded.
- (b) The date of actual possession by the acquiring entity.
- (c) The date upon or after which the acquiring entity may take possession as authorized by an order for possession or by a declaration of taking.

#### § 5082.1. Duties of public entity on acquisition of property

Every public entity shall do all of the following:

- (a) Provide the local assessor and auditor a copy of the instrument evidencing the acquisition of property by the entity.
- (b) Indicate on the instrument referred to in subdivision (a) the date of apportionment.
- (c) Request the auditor to cancel taxes for the remaining portion of the fiscal year after the date of apportionment.
- (d) Provide a map of the acquired property.

#### § 5083. Negotiated purchase or eminent domain; liens for ad valorem taxes

If exempt property is acquired either by negotiated purchase or eminent domain any lien on the property for ad valorem taxes is extinguished as a matter of law upon the acquisition of the property, and the lien immediately transfers and attaches to the proceeds constituting the purchase price or award.

#### § 5084. Unpaid taxes, penalties or costs constituting a lien; payment; transfer to unsecured roll; collection

- (a) No cancellation shall be made of all or any portion of any unpaid taxes or any penalties or costs levied for prior tax years that constitute a lien at the time of acquisition of exempt property.
- (b) Such unpaid taxes, penalties, and costs shall be paid through escrow at the close of escrow or from the award in eminent domain, or if unpaid for any reason, shall be transferred to the unsecured roll pursuant to Section 5090 and are collectible from either the person from whom the property was acquired or the public entity that acquired the property.

**§ 5085. Acquisition of property after lien date but prior to year for which taxes are a lien**

If exempt property is acquired by negotiated purchase, gift, devise, or eminent domain after the lien date but prior to the commencement of the fiscal year for which taxes are a lien on the property, the amount of the taxes for that fiscal year shall be canceled and are not collectible from either the person from whom the property was acquired or the public entity that acquired the property.

**§ 5086. Acquisition of property after year for which current taxes are a lien**

If exempt property is acquired by negotiated purchase, gift, devise, or eminent domain after commencement of the fiscal year for which the current taxes are a lien on the property:

(a) The portion of the current taxes and any penalties and costs that are allocable to the part of the fiscal year that ends on the day before the date of apportionment shall be paid through escrow at the close of escrow or from the award in eminent domain.

(b) The portion of the current taxes and any penalties and costs that are allocable to the part of the fiscal year that begins on the date of apportionment shall be canceled and are not collectible either from the person from whom the property was acquired or from the public entity that acquired the property.

(c) If the amount of taxes or special assessment liens is unknown, the portion of the current taxes attributable to the period of the fiscal year that ends on the day before the date of apportionment shall be ascertained by the auditor on a pro rata basis of the previous year's taxes, and shall be paid to the tax collector. The auditor shall adjust the assessment roll and the tax charge accordingly.

**§ 5086.1. Cancellation of taxes on date of apportionment**

The auditor shall cancel taxes on the date of apportionment provided in the notice required by Section 5082.1.

**§ 5087. Unpaid taxes, penalties and costs; transfer to unsecured roll; collection**

The board of supervisors of a county may provide that all unpaid taxes, penalties, and costs and the allocable portion of current taxes, penalties, and costs computed in accordance with this article shall not be paid through escrow at the close of escrow or from the award in eminent domain, but shall be transferred to the unsecured roll pursuant to Section 5090 and are collectible from the person from whom the property was acquired.

**§ 5088. Property subject to power of sale; unpaid taxes, penalties or costs; transfer to unsecured roll**

Notwithstanding any other provision of this article, unpaid taxes, penalties, or costs shall not be transferred to the unsecured roll with respect to property that has become subject to a power of sale pursuant to Section 3691.

**§ 5089. Unpaid taxes, penalties, and costs to be transferred to unsecured roll; less than \$20; cancellation**

The board of supervisors of a county may prescribe that, where the amount of unpaid taxes, penalties, and costs to be transferred to the unsecured roll pursuant to this article is less than twenty dollars (\$20) with respect to a given fiscal year, the unpaid taxes, penalties, and costs shall be canceled rather than transferred to the unsecured roll.

**§ 5090. Taxes, penalties and costs not subject to cancellation; transfer to unsecured roll; collection; limitation of actions**

(a) If taxes, penalties, and costs that are not subject to cancellation pursuant to this article are unpaid at the time set for the declaration of default of property on the secured roll, they shall be transferred to the unsecured roll pursuant to Section 2921.5, and collected as provided therein.

(b) The statute of limitations on any suit brought to collect taxes, penalties, and costs transferred to the unsecured roll commences to run on the date of transfer, which date shall be entered on the unsecured roll by the auditor opposite the name of the assessee at the time the transfer is made.

(c) The amount of taxes, penalties, and costs collectible on the unsecured roll from a public entity pursuant to this article shall not exceed the amount paid for the property or awarded in the proceeding.

(d) The person from whom the property was acquired is liable to the public entity that acquired the property for any taxes, penalties, and costs collected on the unsecured roll from the public entity.

**§ 5091. Private property acquired for public use; notice**

(a) If a public entity proposes to acquire property for a public use that will make the property exempt from taxation, the public entity shall give notice to the county tax collector and to any public entities whose taxes are not collected by the county tax collector but who at the time exercise the right of assessment and taxation.

(b) The notice shall be given within a reasonable time following the initial budgeting of funds for the proposed acquisition, and shall state all of the following:

(1) The approximate extent of the proposed project.

(2) The estimated time of completion of all acquisitions necessary for the proposed project.

(c) This section creates no rights or liabilities and does not affect the validity of any property acquisitions by negotiated purchase or eminent domain.

**CONSTITUTIONAL PROVISIONS RELATING TO**  
**TAXATION OF PUBLIC PROPERTY**

## CONSTITUTIONAL PROVISIONS RELATING TO TAXATION OF PUBLIC PROPERTY

### Cal.Const. Art. 13:

Sec. 3 [portion]. The following are exempt from property taxation:

- (a) Property owned by the State.
- (b) Property owned by a local government, except as otherwise provided in Section 11(a).
- (c) Bonds issued by the State or a local government in the State.
- (d) Property used for libraries and museums that are free and open to the public and property used exclusively for public schools, community colleges, state colleges, and state universities.
- (e) Buildings, land, equipment, and securities used exclusively for educational purposes by a nonprofit institution of higher education.
- (f) Buildings, land on which they are situated, and equipment used exclusively for religious worship.

\* \* \*

Sec. 11. (a) Lands owned by a local government that are outside its boundaries, including rights to use or divert water from surface or underground sources and any other interests in lands, are taxable if (1) they are located in Inyo or Mono County and (a) they were assessed for taxation to the local government in Inyo County as of the 1966 lien date, or in Mono County as of the 1967 lien date, whether or not the assessment was valid when made, or (b) they were acquired by the local government subsequent to that lien date and were assessed to a prior owner as of that lien date and each lien date thereafter, or (2) they are located outside Inyo or Mono County and were taxable when acquired by the local government. Improvements owned by a local government that are outside its boundaries are taxable if they were taxable when acquired or were constructed by the local government to replace improvements which were taxable when acquired.

(b) Taxable land belonging to a local government and located in Inyo County shall be assessed in any year subsequent to 1968 at the place where it was assessed as of the 1966 lien date and in an amount derived by multiplying its 1966 assessed value by the ratio of the statewide per capita assessed value of land as of the last lien date prior to the current lien date to \$766, using civilian population only. Taxable land belonging to a local government and located in Mono County shall be assessed in any year subsequent to 1968 at the place where it was assessed as of the 1967 lien date and in an amount determined by the preceding formula except that the 1967 lien date, the 1967 assessed value, and the figure \$856 shall be used in the formula. Taxable land belonging to a local government and located outside of Inyo and Mono counties shall be assessed at the place where located and in an amount that does not exceed the lower of (1) its fair market value times the prevailing percentage of fair market value at which other lands are assessed and (2) a figure derived in the manner specified in this Section for land located in Mono County.

If land acquired by a local government after the lien date of the base year specified in this Section was assessed in the base year as part of a larger parcel, the assessed value of the part in the base year shall be that fraction of the assessed value of the larger parcel that the area of the part is of the area of the larger parcel.

If a local government divests itself of ownership of land without water rights and this land was assessed in Inyo County as of the 1966 lien date or in Mono County as of the 1967 lien date, the divestment shall not diminish the quantity of water rights assessable and taxable at the place where assessed as of that lien date.

(c) In the event the Legislature changes the prevailing percentage of fair market value at which land is assessed for taxation, there shall be used in the computations required by Section 11(b) of this Article, for the first year for which the new percentage is applicable, in lieu of the statewide per capita assessed value of land as of the last lien date prior to the current lien date, the statewide per capita assessed value of land on the prior lien date times the ratio of the new prevailing percentage of fair market value to the previous prevailing percentage.

(d) If, after March 1954, a taxable improvement is replaced while owned by and in possession of a local government, the replacement improvement shall be assessed, as long as it is owned by a local government, as other improvements are except



that the assessed value shall not exceed the product of (1) the percentage at which privately owned improvements are assessed times (2) the highest full value ever used for taxation of the improvement that has been replaced. For purposes of this calculation, the full value for any year prior to 1967 shall be conclusively presumed to be 4 times the assessed value in that year.

(e) No tax, charge, assessment, or levy of any character, other than those taxes authorized by Sections 11(a) to 11(d), inclusive, of this Article, shall be imposed upon one local government by another local government that is based or calculated upon the consumption or use of water outside the boundaries of the government imposing it.

(f) Any taxable interest of any character, other than a lease for agricultural purposes and an interest of a local government, in any land owned by a local government that is subject to taxation pursuant to Section 11(a) of this Article shall be taxed in the same manner as other taxable interests. The aggregate value of all the interests subject to taxation pursuant to Section 11(a), however, shall not exceed the value of all interests in the land less the taxable value of the interest of any local government ascertained as provided in Sections 11(a) to 11(e), inclusive, of this Article.

(g) Any assessment made pursuant to Sections 11(a) to 11(d), inclusive, of this Article shall be subject to review, equalization, and adjustment by the State Board of Equalization, but an adjustment shall conform to the provisions of these Sections.

**PROVISIONS RELATING TO TAXATION OF PROPERTY**  
**ACQUIRED BY OWNER OF CONDEMNED PROPERTY**

**PROVISIONS RELATING TO TAXATION OF PROPERTY ACQUIRED BY OWNER OF  
CONDEMNED PROPERTY**

**Cal.Const. Art. 13A, § 2:**

**§ 2. Full cash value assessment; property destroyed by disaster; contaminated property**

Sec. 2. (a) The "full cash value" means the county assessor's valuation of real property as shown on the 1975-76 tax bill under "full cash value" or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment. All real property not already assessed up to the 1975-76 full cash value may be reassessed to reflect that valuation. For purposes of this section, "newly constructed" does not include real property that is reconstructed after a disaster, as declared by the Governor, where the fair market value of the real property, as reconstructed, is comparable to its fair market value prior to the disaster. Also, the term "newly constructed" shall not include the portion of reconstruction or improvement to a structure, constructed of unreinforced masonry bearing wall construction, necessary to comply with any local ordinance relating to seismic safety during the first 15 years following that reconstruction or improvement.

\* \* \*

(d) For purposes of this section, the term "change in ownership" shall not include the acquisition of real property as a replacement for comparable property if the person acquiring the real property has been displaced from the property replaced by eminent domain proceedings, by acquisition by a public entity, or governmental action that has resulted in a judgment of inverse condemnation. The real property acquired shall be deemed comparable to the property replaced if it is similar in size, utility, and function, or if it conforms to state regulations defined by the Legislature governing the relocation of persons displaced by governmental actions. The provisions of this subdivision shall be applied to any property acquired after March 1, 1975, but shall affect only those assessments of that property which occur after the provisions of this subdivision take effect.

**Revenue & Taxation Code § 68**

For purposes of Section 2 of Article XIII A of the Constitution, the term "change in ownership" shall not include the acquisition of real property as a replacement for comparable property if the person acquiring the real property has been displaced from property in this state by eminent domain proceedings, by acquisition by a public entity, or by governmental action which has resulted in a judgment of inverse condemnation.

The adjusted base year value of the property acquired shall be the lower of the fair market value of the property acquired or the value which is the sum of the following:

- (a) The adjusted base year value of the property from which the person was displaced.
- (b) The amount, if any, by which the full cash value of the property acquired exceeds 120 percent of the amount received by the person for the property from which the person was displaced.

The provisions of this section shall apply to eminent domain proceedings, acquisitions, or judgments of inverse condemnation after March 1, 1975, and shall affect only those assessments of that property which occur after June 8, 1982.

Persons acquiring replacement property between March 1, 1975, and January 1, 1983, shall request assessment under this section with the assessor on or before January 1, 1987. Persons acquiring replacement property on and after January 1, 1983, shall request assessment within four years of the date the property was acquired by eminent domain or purchase or the date the judgment of inverse condemnation becomes final.

Any change in the adjusted base year value of the replacement property acquired, resulting from the application of the provisions of this section, shall be deemed to be effective on the first day of the month following the month in which the property is acquired. The change in value shall be treated as a change in ownership for the purpose of placing supplemental assessments on the supplemental roll pursuant to Chapter 3.5 (commencing with Section 75). The assessor shall, however, appraise the replacement property acquired in accordance with the provisions of this section rather than the provisions of Section 75.10. The provisions of Chapter 3.5 shall be liberally construed in order to provide the benefits of this section and Section 2 of Article XIII A of the California Constitution to affected property owners at the earliest possible date.

**18 Cal. Code Regs. § 462.500 ("Rule 462.500")**

(a) General. The term "change in ownership" shall not include the acquisition of comparable real property as replacement for property taken if the person acquiring the replacement real property has been displaced from property in this state by:

- (1) Eminent domain proceedings instituted by any entity authorized by statute to exercise the power of eminent domain, or
- (2) Acquisition by a public entity, or
- (3) Governmental action which has resulted in a judgment of inverse condemnation.

(b) Definitions. The following definitions govern the construction of the words or phrases used in this section.

- (1) "Property taken" means real property taken or acquired as provided in (a).
- (2) "Replacement property" means real property acquired to replace property taken.
- (3) "Award or purchase price" means the amount paid for "property taken" but shall not include amounts paid for relocation assistance or any thing other than the replaced real property. The award or purchase price may not reflect full cash value.
- (4) "Displaced" means a property owner is removed, expelled, or forced from property as a result of eminent domain proceedings, acquisition by a public entity in lieu of instituting eminent domain proceedings, or governmental action resulting in a judgment of inverse condemnation.
- (5) "Real property" includes land, land improvements, living improvements, manufactured homes, and fixed machinery and equipment. Personal property is not entitled to relief under this section.
- (6) "Adjusted base year value" means the base year value, as determined in accordance with Revenue and Taxation Code section 110.1, with the adjustments permitted by subdivision (b) of Section 2 of Article XIII A of the California Constitution and subdivision (f) of Revenue and Taxation Code section 110.1.

(c) Comparability. Replacement property, acquired by a person displaced under circumstances enumerated in (a), shall be deemed comparable to the property taken if it is similar in size, utility, and function.

- (1) The size of property is associated with value, not physical characteristics. Property is similar in size if its full cash value does not exceed 120 percent of the award or purchase price paid for the property taken.

A replacement property, or portion thereof, that has a full cash value which exceeds 120 percent of the award or purchase price shall be considered, to the extent of the excess, not similar in size.

(2) Property is similar in function and utility if the replacement property is not intended to be used in the same manner as the property taken. Property is similar in function and utility if the property taken and the replacement property both fall into the same category:

Category A: Single family residence or duplex. Small miscellaneous buildings may be included when used with residence.

Category B: Commercial, investment, income, or vacant property. Single family residences and duplexes that are used as investment property may be considered income property if sufficient proof is provided to the assessor. Proof may include, but is not limited to, rental or lease agreements, cancelled checks, income tax returns, or other investment records.

If property does not fall within Category A or Category C, it falls within Category B.

Category C: Agricultural property. "Agriculture" includes farming in all its branches, and, among other things, includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed incidental to or in conjunction with such farming operations, including preparation for market and delivery to storage or to market or to carriers for transportation to market.

Agricultural property that is in transition may be considered similar to property described in Category B if property in its vicinity has been changing from historically agricultural use to another use. Factors that may be considered to determine whether agricultural property is in transition include, but are not limited to:

- Restrictions that would prohibit the property taken from converting to property described in Category B such as the general plan, community plan, or special plan. Current zoning restrictions are not such a restriction if the general plan, community plan, or special plan contemplate a zoning change.
- The highest and best use of the property taken;
- The type of comparable property that was used by the acquiring government body to value the property taken.

(3) To the extent that replacement property, or any portion thereof, is not similar in function, size and utility, the property, or portion thereof, shall be considered to have undergone a change in ownership.

EXAMPLE 1: An owner-occupied single family residence is replaced by a combination dwelling and commercial property. Relief is applicable to only the dwelling portion of the replacement property; the commercial portion shall be considered as having changed ownership.

EXAMPLE 2: A combination dwelling and commercial property is replaced with an owner-occupied single family residence. Only the dwelling portion of the property taken shall be considered in determining the comparability and the amount of relief. The right to relief on the commercial portion of the property taken is waived unless replacement Category B property is acquired after the date of displacement and a timely request is made for assessment relief.

EXAMPLE 3: A combination dwelling and commercial property is replaced with a Category A single family residence, and later the displaced person also acquires a separate replacement Category B property. Pro-rata relief shall be granted on both the replacement Category A single family residence and Category B property.

EXAMPLE 4: An owner-occupied single family residence is replaced with an owner-occupied single family residence and a vacation home. Relief is applicable to both properties.

EXAMPLE 5: An owner-occupied single family residence that has a homeowners' exemption is replaced with a single family residence that is to be used as a rental property. The replacement property qualifies for relief because a Category A property is replaced by another Category A property.

EXAMPLE 6: A duplex in which the property owner lived in one unit and rented the other unit is replaced with two single family residences, one of which will be owner occupied. Relief is applicable to both properties.

EXAMPLE 7: Three single family residences that were owned by a taxpayer and used as rental properties were replaced by a small apartment complex. Relief is available under Category B if the taxpayer provides proof to the assessor that the single family residences were held as income property.

EXAMPLE 8: A taxpayer owns a 40-acre vineyard which includes an owner-occupied single family residence. The owner-occupied single family residence is taken along with 5 acres of grapevines. To qualify for relief, the owner-occupied single family residence must be replaced with Category A property; the vineyard must be replaced with other Category C property or, if the property is in transition to another use, it may be replaced with a Category B property.

(d) Base Year Value of Replacement Property. The following procedure shall be used by the assessor in determining the appropriate adjusted base year value of comparable replacement property:

(1) Compare the award or purchase price paid by the acquiring entity for the property taken or acquired with the full cash value of the comparable replacement property.

(2) If the full cash value of the comparable replacement property does not exceed 120 percent of the award or purchase price of the property taken, then the adjusted base year value of the property taken shall become the replacement property's base year value, regardless of the allocation between land and improvements.

(3) If the full cash value of the replacement property exceeds 120 percent of the award or purchase price of the property taken, then the amount of the full cash value over 120 percent of the award or purchase price paid shall be added to the adjusted base year value of the property taken. The sum of these amounts shall become the replacement property's base year value.

(4) If the full cash value of the comparable replacement property is less than the adjusted base year value of the property taken, then that lower value shall become the replacement property's base year value.

(5) If there is no award or purchase price paid by the acquiring entity (i.e., an exchange) for the property taken, then the full cash value of the acquired property and the full cash value of the replacement property shall be determined by the assessor of the county in which each property is located for the purpose of applying the other provisions of this subdivision. The procedure set forth in subdivision (d)(1) through (d)(4) shall then be applied to determine the replacement property's base year value.

(6) A base year value may be reallocated upon the transfer to the replacement property. The appraisal unit that is normally bought and sold in the market place may be used to determine the amount of base year value that is allocated to the property taken.

EXAMPLE 9: A commercial property, consisting of land and improvements, is taken and replaced with a Category B structure that was built on land that the taxpayer already owned. The land is ineligible for relief because it was previously owned. Despite the ineligibility of the land, the base year value of the property taken (land and improvements) may be transferred to the newly constructed improvements to the extent it meets the value and timing requirements.

(e) Ownership Requirements. Only the owner or owners of the property taken, whether one or more individuals, partnerships, corporations, other legal entities, or a combination thereof, shall receive property tax relief under this section. Relief under this section shall be granted to an owner(s) of property taken who

obtains title to replacement property. The acquisition of an ownership interest in a legal entity which, directly or indirectly, owns real property is not an acquisition of comparable property.

EXAMPLE 10: A and B each own an undivided 50 percent interest as joint tenants in a home which is taken through eminent domain proceedings by the state. A purchases a replacement property which is comparable to the property taken. B contributes his share of the award or purchase price to a limited partnership which owns a home which is comparable replacement property. A's relief under this section is limited to 120 percent of one-half of the award or purchase price of the property taken. B is entitled to no relief.

EXAMPLE 11: A partnership composed of two corporations owns commercial property which is taken through eminent domain proceedings. The partnership uses the award or purchase price to acquire Category B property. The partnership is entitled to relief under this section.

EXAMPLE 12: A partnership composed of two corporations owns commercial property which is taken through eminent domain proceedings. The partnership distributes the award or purchase price to the partner corporations in the same percentage as their ownership interests and the corporations separately or jointly acquire comparable replacement property retaining the same percentage of ownership interest in the partnership. No tax relief may be granted under this section.

For purposes of this section, owner means the fee owner or life estate owner of the real property taken and excludes the lessee thereof unless the lessee owns improvements located on land owned by another, in which case, the lessee shall be entitled to property tax relief for comparable replacement improvements.

(f) New Construction. Any new construction required to make replacement property comparable to the property taken shall, to that extent, be eligible for property tax relief, if such new construction is completed on or after the earliest of the dates listed in subdivision (g)(3), and if a timely request is made for assessment relief.

(g) Time Limits for Qualification.

(1) The provisions of this section shall apply to property acquired as replacement property for property taken by eminent domain proceedings, public acquisitions, or judgments of inverse condemnation, provided the person acquiring replacement property makes a timely request for such assessment with the assessor. The replacement property must be acquired before a request is made. Reassessments and refunds shall be made retroactively to the date of acquisition of replacement property for property taken, provided a timely request is made therefor.

(2) For purposes of this section, a request shall be deemed timely if made within four years after one of the following dates, whichever is applicable:

(A) The date final order of condemnation is recorded or the date the taxpayer vacates the property taken, whichever is later, for property acquired by eminent domain;

(B) The date of conveyance or the date the taxpayer vacates the property taken, whichever is later, for property acquired by a public entity by purchase or exchange; or

(C) The date the judgment of inverse condemnation becomes final or the date the taxpayer vacates the property taken, whichever is later, for property taken by inverse condemnation.

(3) Replacement property shall be eligible for property tax relief under this section if it is acquired on or after the earliest of the following dates:

(A) The date the initial written offer is made for the property taken by the acquiring entity;

(B) The date the acquiring entity takes final action to approve a project which results in an offer for or the acquisition of the property taken;

(C) The date the 'Notice of Determination,' 'Notice of Exemption,' or similar notice, as required by the California Environmental Quality Act (CEQA), is recorded by the public entity acquiring the taxpayer's property and the public project has been approved; or

(D) The date, as declared by the court, that the property was taken.

(4) No property tax relief shall be granted to replacement property, however, prior to the date of displacement. The date of displacement shall be the earliest of the following dates:

(A) The date the conveyance of the property taken to the acquiring entity or the final order of condemnation is recorded;

(B) The date of actual possession by the acquiring entity of the property taken; or

(C) The date upon or after which the acquiring entity may take possession of the property taken as authorized by an order for possession.

(h) Administration.

(1) The assessor shall consider any of the following documents as proof of actual displacement of a taxpayer when a request has been made for the assessment relief provisions under this section:

(A) A certified recorded copy of the final order of condemnation, or, if the final order has not been issued, a certified recorded copy of the order for possession showing the effective date upon or after which the acquiring entity is authorized to take possession of the property taken;

(B) A copy of a recorded deed showing acquisition by a public entity; or

(C) A certified copy of a final judgment of inverse condemnation.

(2) Upon receipt of a taxpayer request and proof of actual displacement, the assessor shall forward to the Board such information regarding the identification of a displaced property as the Board may require. The Board shall review such information to determine whether more than one request for assessment relief has been made as a result of a single taking or governmental acquisition and if so shall advise the appropriate assessor(s).



**IMPACT OF PROPOSITION 99 (“HOMEOWNERS AND  
PRIVATE PROPERTY PROTECTION ACT”) WHICH  
BECOMES EFFECTIVE JUNE 4, 2008**

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**Impact Of Proposition 99 ("Homeowners and Private Property Protection Act") Which Becomes Effective June 4, 2008**

In the June 3, 2008 Statewide Direct Primary Election, California voters approved Proposition 99 (officially known as the "Homeowners and Private Property Protection Act") and rejected the more far reaching provisions of the competing Proposition 98. Both propositions were intended to address perceived abuses in the eminent domain process whereby a public entity can take private property for a public use upon payment of just compensation to the owner.

**The stated intent and purpose of Proposition 99 is to:**

- Protect homes from eminent domain abuse;
- Prohibit government agencies from using eminent domain to take an owner-occupied home and transfer it to another private party;
- Respond to the recent U.S. Supreme Court decision of *Kelo v. City of New London* in which the Court upheld the taking of a private residence and transferring it to a private party for economic development purposes;
- Provide a mechanism to compensate property owners when property is taken or damaged by State or local government but without affecting legislative and administrative actions taken to protect the public health, safety and welfare.

**Given this intent and purpose, Proposition 99 does the following:**

- Amends the State Constitution to expressly provide that: "The State and local governments are prohibited from acquiring by eminent domain an owner-occupied residence for the purpose of conveying it to a private person."

**This prohibition does not apply to the following:**

- When State or local government exercises the power of eminent domain for the purpose of

protecting public health and safety, preventing serious, repeated criminal activity, responding to an emergency, or remedying environmental contamination that poses a threat to public health and safety; or

- When State or local government exercises the power of eminent domain for a public work or improvement.

**As used in Proposition 99:**

- The prohibition on the conveyance of private property refers to a transfer by sale, lease, gift, franchise or otherwise;
- Local government is broadly defined to include a comprehensive list of most types of governmental agencies;
- Owner-occupied residences means a single residence, condominium or townhouses that is the owner's principal place of residence for at least one year prior to the government's initial written offer to purchase the property;
- Public work or improvement is broadly defined to include a wide variety of uses and also includes private uses incidental to, or necessary for, the public work or improvement. The terms of Proposition 99 are not intended to change existing constitutional definitions or restrict the power of eminent domain except as provided.

The terms of Proposition 99 do not apply if the initial offer to acquire the property was made prior to the date Proposition 99 becomes effective and a resolution of necessity to condemn the property is adopted within 180 days.

**Impact:**

Proposition 99 is not likely to have a significant impact on most public agencies. Proposition 99 does not impose any new procedural

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requirements. Proposition 99 does not limit the vast majority of eminent domain actions involving acquisition for a traditional public use such as a roadway or school. However, Proposition 99 may affect the relatively rare situation where a public agency attempts to condemn a private residence to transfer it to a private party unless the acquisition comes within one of the broadly drafted exceptions.