



# Eminent Domain

## California Eminent Domain Law

The United States and California Constitutions authorize public entities to acquire private property for public use upon payment of just compensation. The California Legislature has adopted a comprehensive statutory scheme that regulates when and how California public entities may acquire private property for public use. Those laws are codified in the Fifth Amendment of the United States Constitution, Article 1; Section 19 of the California Constitution; the California Eminent Domain laws (Code of Civ. Pr oc. sections 1230.010 et seq.), and other statutes that set forth the various powers of specific public agencies. In most eminent domain actions, the sole issue is the determination of “just compensation,” i.e., the fair market value of the property being acquired.

Eminent Domain is a highly specialized and nuanced area of law. Under the California Eminent Domain Laws, the private property owner is entitled to receive fair market value for the property taken, which is the highest price for the property or business that a willing buyer would have paid to a willing seller assuming no obligation to sell. If that price cannot be negotiated, then the determination of fair market value is determined by a jury.

There is much at stake when a public entity is charged with delivering completion of a much needed infrastructure project on time and within budget. Public entities do not want to be surprised, and cannot afford for mistakes to occur in the acquisition of the real property required for a project. An attorney’s lack of experience and ability to think strategically can derail a project, place millions or tens of millions of dollars of state and/or federal funding at risk, and cost millions of taxpayer dollars. Burke’s California Eminent Domain attorneys are experts in the field. Collectively, we have acquired countless properties for numerous public projects throughout California.

Eminent domain proceedings are multi-faceted. In addition to determining the fair market value of the property taken or business on the date of valuation, Burke Eminent Domain lawyers are well versed in obtaining possession of the property to be acquired before trial. Our California eminent domain lawyers are also well-versed in both the federal and California relocation laws, which provide relocation compensation and assistance to private property owners, tenants, and businesses that are displaced as a result of eminent domain

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proceedings.

### **Pre-Litigation Services**

Burke's California Eminent Domain attorneys get involved at the initiation of a project to align project goals with eminent domain strategy, identify and resolve potential risks, and ensure compliance with state and federal regulations and laws. Prior to litigation, we attend project meetings, obtain rights of entry, draft and/or review acquisition documents, review appraisals for legal compliance, and negotiate with property owners. Burke's goal is always to try to settle as many cases as possible without litigation and to ensure that all statutory pre-requisites for filing a condemnation action have been complied with in a timely and efficient manner.

If negotiations are not successful, Burke Eminent Domain attorneys assist a public sector client with the administrative process necessary before eminent domain proceedings can be filed in court. This includes drafting staff reports, resolutions of necessity, and notices to property owners, as well as counseling the legislative body considering the condemnation action and attending and speaking at public hearings.

### **Eminent Domain Litigation**

If Burke's California Eminent Domain attorneys are unable to settle and the public agency adopts a resolution of necessity, they immediately prepare complaints and all documents required to file a condemnation action. The day after Burke files a complaint, the firm makes the deposit of probable compensation and within days files the motion for prejudgment possession, so the complaint, motion, and related documents can all be served together to save costs. Burke's California Eminent Domain attorneys have an excellent record in obtaining orders for prejudgment possession and handling litigation through the filing and recording of Final Orders of Condemnation. Burke Eminent Domain litigation attorneys have extensive bench and jury trial experience. Our team is not afraid to go to trial if necessary, but prefers to settle at an amount that is fair to both the property owner and the public agency. Our California Eminent Domain lawyers are equally successful in defending our trial results on appeal.

### **Other Eminent Domain Proceedings**

California Eminent Domain Law is unique in that it allows litigants to obtain an early court decision on evidentiary or other legal issues affecting the determination of just compensation. Burke Eminent Domain attorneys use this tool to achieve favorable court rulings before trial, which often results in a favorable settlement.

Eminent domain proceedings often cross over into other aspects of California law, including environmental, land use, agricultural, construction, title, and development issues. Burke's deep bench of Eminent Domain and Land Use attorneys have experience in these related specialty areas, which allows for a well-rounded approach to any issue that a case may present.

### **Consult Burke's Eminent Domain Team**

Public agencies choose Burke's California Eminent Domain attorneys for advice and counsel because we are among the most experienced and respected practitioners in California. With decades of collective experience, the Burke Eminent Domain team has addressed nearly all legal and valuation eminent domain issues. Burke's Eminent Domain team has acquired virtually every type of property for a wide array of public uses. Our team has worked with transportation agencies, counties, cities, public utilities, educational institutions, redevelopment agencies, and special districts to acquire property for all types of projects, including bypass, interchange, highways, rail transit, public housing, schools, parks, sanitation and flood control facilities, maintenance yards, sports stadiums and arenas, airports, and blight removal. Our team knows routine opponents, having many years of experience with the attorneys and appraisers who specialize in representing landowners throughout California. Burke leverages this experience in obtaining the most favorable possible results for public agency clients.

Burke Eminent Domain attorneys regularly publish on topics and speak at numerous events related to California eminent domain law. We are a vital resource for public agencies seeking positive improvements for their communities. To complement our eminent domain legal services, we draw on a highly qualified and experienced team of other professionals as needed, including community relations and environmental consultants, geotechnical experts, relocation agents, title and escrow officers, appraisers and others.

Burke's California Eminent Domain attorneys work with our public entity clients to resolve cases efficiently and economically, and to use eminent domain litigation only as a "last resort." But when cases cannot be resolved through settlement efforts, our team has unparalleled experience in using the court process to achieve public agency client objectives. Applied litigation tools may include: obtaining pre-condemnation rights of entry; obtaining pre-judgment orders for possession; resolving "right to take" objections by way of motions or bench trials; resolving goodwill entitlement issues through motion or bench trial; resolving valuation issues through motions and jury trials; and doing all this within budget. As proven litigators, our California Eminent Domain attorneys have developed extensive knowledge of judges and arbitrators throughout the state.

Burke's Eminent Domain team are professionals with the breadth of knowledge needed to successfully practice in the highly specialized and nuanced area of California eminent domain law. We are dedicated and passionate about helping public entities achieve their public infrastructure development project goals. Please [contact us](#) to learn more about how Burke can assist with your California eminent domain law needs. Please also see Burke's California [Inverse](#)

Condemnation law capabilities.