



#### RELATED PRACTICES

Eminent Domain

#### RELATED PEOPLE

Alan A. Sozio

## Condemning Future Interests - Part 1

---

Where there are contingent future interests in property acquired by eminent domain, the future interest holders may be entitled to compensation. This is because the value of the fee owner's interest in the property is diminished to the extent of the value of the contingent future interest. Thus, any award for the value of the property must be apportioned between the fee and the future interest holder.

The methodology of apportionment is spelled out in Section 1265.410(a)(1) of the Eminent Domain Law. Where the property's acquisition violates a use restriction coupled with a contingent future interest granting a right to possession of the property upon violation of the use restriction, and violation of the use restriction was otherwise reasonably imminent (i.e., to the exclusion of any consideration of the eminent domain proceeding), the owner of the contingent future interest is entitled to compensation for its value.

In short, section 1265.410(a)(1) contemplates a situation in which the grantee of the conditional deed intends to continue to comply with the condition indefinitely, but is prevented from doing so because the public agency has seized title to the property through the power of eminent domain. And because it applies in situations where the holder of the present interest's intentions are frustrated by the condemnor, it necessarily assumes that the present interest holder and the condemnor are separate entities dealing at arm's length.

Note that if the present interest holder and the condemnor are one in the same, then Section 1265.410(a)(1) does not apply and the condemnor is not entitled to receive a portion of the condemnation award. See *City of Palm Springs v. Living Desert Reserve* (1999) 70 Cal.App.4th 613.