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Excess Condemnation – Part 1

Two scenarios sometimes arise when a public agency is considering acquiring only a portion of a property for a public use.

First, the parties may be concerned that the remainder not taken, or portion thereof, will be left in such size, shape, or condition as to be of little value to its owner (i.e., an uneconomic "remnant") or will result in a claim for severance damages. Under these circumstances, the agency may acquire the whole property, or the remnant, by any means (including eminent domain) expressly consented to by the property owner (CCP § 1240.150).

If the property owner does not consent to a full taking, the agency may still take the remainder if the agency determines, on its own, that the remainder will be of little value to the owner (CCP § 1240.410(a), (b)). Reference must be made in both the resolution of necessity and the eminent domain complaint to the statute authorizing this approach (CCP § 1240.420). The owner can challenge this determination in court by proving the agency has the means to prevent the remainder from becoming an uneconomic remnant (CCP § 1240.410(c)).

The next article, Excess Condemnation – Part 2 will discuss what rules may apply to the uneconomic remnant after it has been acquired by the agency.

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