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Liens

It is a common perception that lienholders like to be paid first when a property owner is compensated following the acquisition of property. However, California's Eminent Domain Law thinks differently when only a partial taking occurs.

Section 1265.225(a) of the Code of Civil Procedure provides that, when only a partial taking of property occurs, a lienholder may share in the award only if its underlying security interest is impaired. In other words, if the value of the remaining property equals or exceeds the outstanding amount owed on the lien, then no portion of the just compensation is apportioned to the lienholder. If the parties cannot agree, this determination is made by the court.

Subsection (b) to Section 1265.225 allows the lienholder and property owner to make any agreement otherwise. To this end, lienholders often include in the initial signed loan documents language redistributing in their favor the amount of any future award of just compensation, even where only a partial taking occurs.

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Labor & Employment and Litigation partner Rachel E. Balchum authored a *Daily Journal* guest column article entitled "CalChamber's federal challenge to SB 399 'captive audience' meetings law". Rachel analyzes how California's new 'Worker Freedom and Employer Intimidation Act' (SB 399), banning mandatory workplace meetings on political, religious, or union matters, faces a constitutional challenge from business groups, sparking a legal battle that could redefine workplace speech and labor law boundaries. Click here to read this article.

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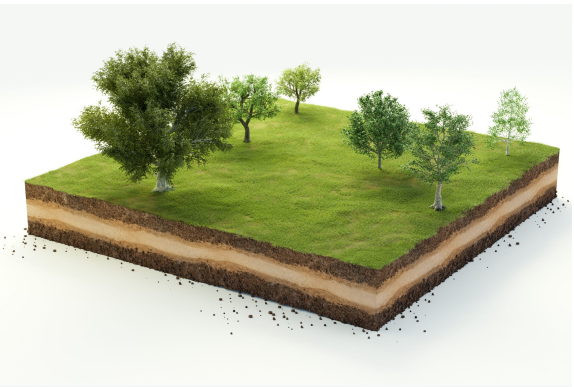

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Condeming Future Interests – Part 2

In my last post, I discussed how contingent future interests are valued, where it is shown the contingent future interest holders are entitled to compensation under Section 1265.410(a)(1). But what if they are not? What are the rules for valuing the property then?

Subsection (b) to speaks to this situation. Where the use restriction requires the property to be devoted to a particular charitable or public use, and it did not appear that the property's owner would be violating the use restriction in the near future, the property must be valued at the same or similar charitable or public use coupled with the same contingent future interest. But, presumably, no compensation to the holder of the future interest.

Section 1265.410 is silent as to how the property is to be valued if the use restriction is not for a charitable or public use. So, presumably, the highest and best use of the property would apply.

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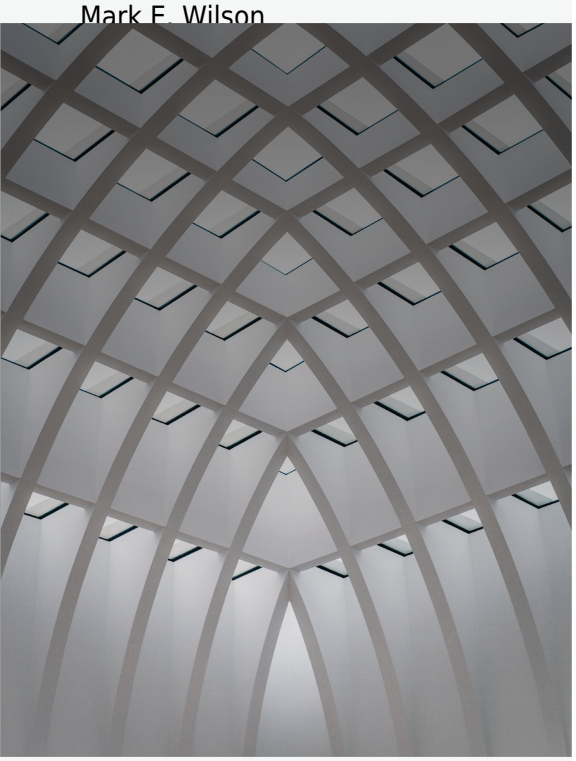

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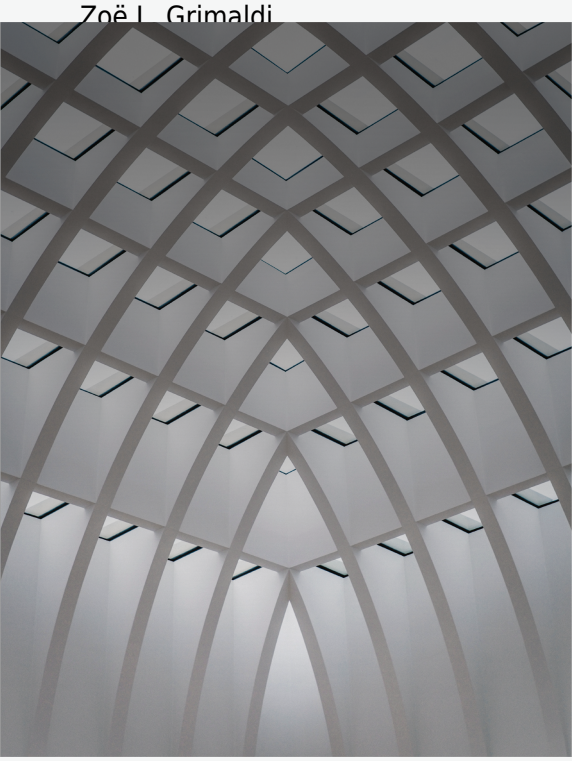

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Condemning Future Interests – Part 1

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

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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.

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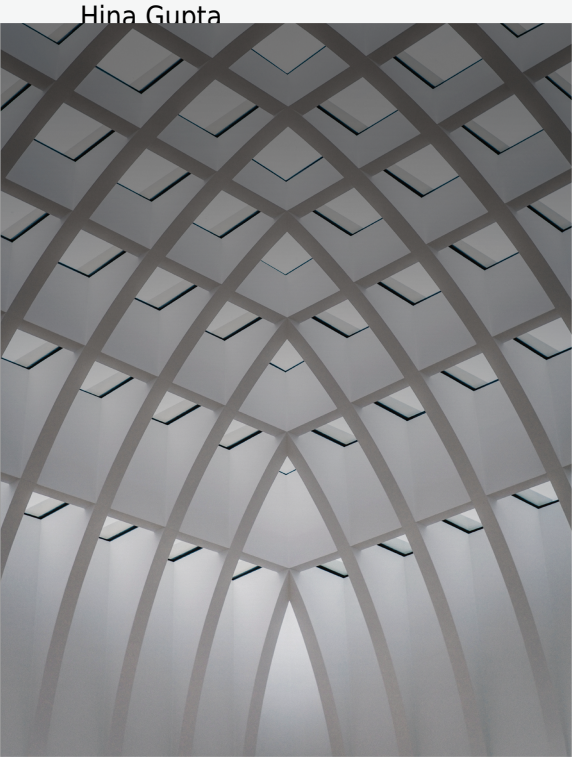

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