

Come Out a Winner When Leaseholds Are Condemned

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Freeway expansion, subway development and the bullet train all guarantee one thing: more government takings of private property. But once a taking occurs, it may be far too late to make your leasehold client a winner. When entering into a commercial lease, most clients (and their attorneys) pay little attention to the boilerplate provision buried at the end of the agreement known as the condemnation clause. After all what are the chances that condemnation will occur? Yet this clause dictates the right to compensation for both landlords and tenants and some minor changes now could lead to major benefits down the line.

Condemnation is where the government exercises its power of eminent domain to take private property for a public use. Article I, Section 19 of the state Constitution prohibits such takings without providing just compensation to anyone with an economic interest in the property. The property owner usually takes the lion's share of this compensation. But, if the property is subject to a lease, the tenant may be entitled to a significant portion of the award as well.

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