



# What is Better? part 2

## Acquisition by Purchase Agreement or Final Order of Condemnation

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This is part two of a three-part series exploring the legal complexities of acquisition by 1) purchase and sale agreement, 2) final order of condemnation and 3) appropriate situations for using each option. This second article examines legal complexities in acquisitions by final order of condemnation.

### What is a Final Order of Condemnation

All states and federal courts have adopted laws for recognizing the vesting and transfer of condemned property rights in an acquiring public agency. Due process requires public agencies to follow carefully regimented procedures to acquire private property, and sometimes public agency

property, by condemnation. In California, the Code of Civil Procedure § 1268.030 specifies what constitutes a Final Order of Condemnation as follows:

- (a) Upon application of any party, the court shall make a final order of condemnation if the full amount of the judgment has been paid as required by § 1268.030 or satisfied pursuant to § 1268.030.
- (b) The final order of condemnation shall describe the property taken and identify the judgment authorizing the taking.
- (c) The party upon whose application the order was made shall serve notice of the making of the order on all other parties affected thereby. Any party affected by the order may thereafter record a certified copy of the order in the office of the recorder of the county in which the property is located and shall serve notice of recordation upon all other parties affected thereby. Title to the property vests in the plaintiff upon the date of recordation.

### Primer on Process and Proof

For context, the following is an abbreviated primer on condemnation case processing. The resolution of necessity directs the public agency lawyers to prepare and file a civil complaint in condemnation with the court where the property is located, and venue and jurisdiction is proper. Once the complaint is filed, the named parties must be personally served with a copy of a court summons to appear and the complaint in condemnation. The condemnation complaint package may include court hearing notices and general instructions for responding to the complaint. Thereafter, the condemnation matter can be resolved at any time by negotiation, mediation, settlement, default against non-responsive parties and trial. Once the condemnation case reaches resolution in any of the aforementioned ways, a judgment in condemnation is prepared and submitted to the court.

**Condemnation Lawsuit Resolved by Settlement, Trial or Default**  
Most often, cases resolve by settlement between the parties following voluntary negotiations and mediation. Alternatively, condemnation matters are resolved by a trial and verdict. Cases can also be resolved by default judgment if the property owner and all interest holders are properly served, and they fail to formally respond to the lawsuit. In the absence formal responses and opposition to a complaint in condemnation, the court requires the public agency to do a “default prove-up” demonstrating that the complaint was properly served, no responses were received, the provision of evidence of public necessity, greatest public good with least private injury and that just compensation is tendered. Completed condemnation cases, by settlement, trial or default, require a formal judgment in condemnation. The judgment in condemnation requires a surveyor-verified legal description of the property rights being acquired, a certified appraiser’s declaration of the probable amount of just compensation, and all fact and legal specific directives ordered by the court. The public agency’s probable compensation shall remain on deposit with the court clerk or other court approved third party and will be made available for withdrawal by any verified applicant, subject to court approval.

Once the court approves and executes the proposed form of the judgment in condemnation, the public agency becomes the judgment debtor responsible for payment of the judgment amount of just compensation to the judgment creditor property owner or lienholder. Upon proof of payment of the just compensation award, the public agency then prepares and seeks a court-approved final order of condemnation. The court approves the form and substance of the final order of condemnation, and the public agency then submits the court-signed document for recordation with the local county recorder’s office. Said recordation constitutes formal notice of the completed property transfer to the public agency. On a separate note, these acquisitions by condemnation and the recorded final order of condemnation are an extra step compared to other general civil litigation matters. In most other civil litigation matters, the civil court judgment would itself essentially operate as the final executable legal court instrument that thereafter can be recorded to provide notice of a judgment lien.

### Why a Final Order of Condemnation?

A final order of condemnation is the necessary last step in providing actual legal notice of the public agency’s property rights acquisition. This provides a predictable end to the legal process assuring affected property owners that they are afforded their due process rights in conjunction with this property taking, including the opportunity to contest and object to the public agency’s right to take property and the appropriate amount of just compensation. Acquisition by condemnation is sometimes lengthy, occasionally contentious, but most often very straightforward.

Cases resolved by a complaint in condemnation forces the involvement of all interested parties but also provides a neutral forum to resolve all issues in a time-driven manner based upon the court rules and schedule. All compensation issues in condemnation cases are necessarily raised, considered, argued and then eventually resolved. Purchase and sale agreements that include an escrow to complete the transaction don’t have the same court-driven requirements for completion of tasks forcing resolution of property ownership and just compensation disputes.

In the final article of this three-part series, we will compare and contrast various common scenarios involving acquisitions by Purchase and Sale Agreement and Final Order of Condemnation. ☛



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