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CIVIL CODE - CIV

DIVISION 2. PROPERTY [654 - 1422] (*Heading of Division 2 amended by Stats. 1988, Ch. 160, Sec. 13.*)

PART 4. ACQUISITION OF PROPERTY [1000 - 1422] (*Part 4 enacted 1872.*)

TITLE 1. MODES IN WHICH PROPERTY MAY BE ACQUIRED [1000 - 1002] (*Title 1 enacted 1872.*)

1000. Property is acquired by:

1. Occupancy;
2. Accession;
3. Transfer;
4. Will; or,
5. Succession.

(*Enacted 1872.*)

1001. (a) As used in this section, "utility service" means water, gas, electric, drainage, sewer, or telephone service.

(b) Any owner of real property may acquire by eminent domain an appurtenant easement to provide utility service to the owner's property.

(c) In lieu of the requirements of Section 1240.030 of the Code of Civil Procedure, the power of eminent domain may be exercised to acquire an appurtenant easement under this section only if all of the following are established:

- (1) There is a great necessity for the taking.
- (2) The location of the easement affords the most reasonable service to the property to which it is appurtenant, consistent with the least damage to the burdened property.
- (3) The hardship to the owner of the appurtenant property, if the taking is not permitted, clearly outweighs any hardship to the owner of the burdened property.

(*Added by Stats. 1976, Ch. 994.*)

1002. (a) Subject to the provisions of Article 3 (commencing with Section 1245.310) of Chapter 4 of Title 7 of Part 3 of the Code of Civil Procedure, the power of eminent domain may be exercised by an owner of real property to acquire a temporary right to enter upon adjacent or nearby property to repair or reconstruct land or improvements, if all of the following conditions are established or met:

- (1) There is a necessity to do the repair or reconstruction work and there is a great necessity to enter upon the adjacent or nearby property to do the repair or reconstruction work because (A) the repair or reconstruction work cannot be done safely without entry, or the cost of performing the repair or reconstruction work without entry would be substantially higher; and (B) the property without repair or reconstruction adversely affects the surrounding community.
- (2) The right to enter upon the adjacent or nearby land will be exercised in a manner which provides the least damage to the property and the least inconvenience or annoyance to the occupants or owners thereof consistent with satisfactory completion of the repair or reconstruction work.
- (3) The hardship to the person seeking to exercise the power of eminent domain, if that power is not exercised, clearly outweighs any hardship to the owner or occupant of the adjacent or nearby property.

(b) No entry shall be made upon the property to be condemned until an eminent domain proceeding has been commenced and then only after a court order permitting entry is issued or after judgment is entered for the

plaintiff.

A deposit of security, in the form of cash or a bond, shall be made to the court in an amount the court determines is necessary to permit the owner of the adjacent or nearby property to restore the property to the condition it was in prior to the entry, if the person exercising the power of eminent domain does not do so within a reasonable period of time as determined by the court.

(c) The court may order the person acquiring the temporary right to enter the land of another, pursuant to this section, to pay the owner of the land subject to that temporary right a reasonable amount of rent for the use of the land.

(d) "Adjacent" or "nearby" for purposes of this section shall mean land contiguous with the property needing repair or reconstruction, or land through which the party granted temporary access must pass to reach adjacent land.

(e) The provisions of this section shall not apply to the temporary entry upon lands used primarily for the commercial production of agricultural commodities and forest products.

(Added by Stats. 1982, Ch. 1239, Sec. 1.)