

## **ALERT:**

### **COMPENSATION FOR LAND RESUMPTION AND RESERVATION**

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1. Pursuant to the *Planning and Development Act 2005 (WA)* (**PDA**) and the *Land Administration Act 1997 (WA)* (**LAA**), a Government agency has the power to reserve, in the instance of the PDA, and resume, in the instance of the LAA, land for a public purpose such as an important regional road, a planning control area and regional open space.
2. In the instance of the reservation of land under the PDA and subject to certain pre-conditions, a land owner whose land is partially or totally reserved for a public purpose will have a right to claim compensation from the reserving authority for the loss in the value of the owner's land occasioned by the reservation.
3. In relation to a reservation under the PDA, a very careful and strict process must be followed by the owner of the land in order to ensure the maximisation of the land owner's claim for compensation arising from the reservation.
4. With respect to a claim for compensation under the LAA, the entitlement of compensation arises upon the resumption or taking of the land by a Government agency for a public purpose. If land is taken by a Government agency for a public purpose then the provisions of the LAA entitle the owner, whose land has been partially or totally taken, to claim compensation for the taking. In law, the taking of the land converts the owner's interest in the land to a right to claim compensation for the land taken.
5. Under the LAA, the compensation payable to the former owner of the taken land is governed by the provisions of Section 241 of the LAA and covers such entitlements as compensation for land value, compensation for disruption, severance, injurious affection, solatium and interest.
6. As with the PDA, a careful approach must be taken by the former land owner in order to ensure the maximisation of the land owner's entitlement to compensation.

7. In each instance, the starting point for the assessment of compensation is the “but for” test, which in essence means ‘what would the value of the land, reserved or taken, have been had the reservation or the taking, pursuant to the public purpose scheme, not have occurred’. The highest and best use of the land is a planning and valuation question and not capable of a simple answer. Expert planning and valuation evidence, together with expert environmental and engineering evidence, in some instances, will be required.
8. In order to ensure the protection of an owner’s right to claim compensation under either pieces of legislation, the claim must be made before the expiration of 6 months after the reservation or taking. Once the claim for compensation has been made it is important that the owner or former owner, depending upon the circumstances, ensure that any legal action for compensation is commenced within 6 years after the date of reservation or taking. If either of those two time limits are not met, the claim for compensation is unenforceable at law.
9. If your land has been the subject of a reservation or of a taking order and you would like to discuss your rights to compensation or your rights generally, please do not hesitate to contact our Kim Valenti.

## CONTACT

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