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**MEETING DATES:**  
**Riverside Convention Center**  
**3443 Orange Street**  
**Riverside**  
**951-787-7950**

**LUNCHEON 11:30–1pm**  
**(First Wednesday)**

- February 2
- March 3
- April 14\*\*\* Change
- May 5
- June 2
- Sept. 1
- Oct. 6
- Nov. 3
- Dec—TBD

**BOARD**  
**(Third Thursday)**

- February 18
- March 18
- April 15
- May 20
- June 17
- August 19
- Sept. 16
- Oct. 21
- Nov. 18
- Dec—TBD



## A MESSAGE FROM CHAPTER 57'S PRESIDENT

It seems you can't go anywhere without seeing some sign of love. There are hearts, cupids, arrows and mushy love sayings everywhere you look. There is a level of expectation to give something special, say something amazing or make some grandiose presentation to the one you love. Just a side note men; for Valentine's Day, your wife is not going to want a vacuum cleaner, tool set, exercise equipment or deodorant.

It amazes me that rain or shine, no matter how bad things get or the circumstances surrounding our day to day lives, some things remain constant. You can always count on Valentine's Day, every February 14<sup>th</sup>.

It is important to have consistency in your life, some things that you can always count on. However, there are some things that need to change in order to keep up with the ever changing times. This year, the board is looking to make some changes to the bylaws for Chapter 57. The process to make these changes is very time consuming and requires some financial commitment by the Chapter. Thanks to the hard work by Brad Bassi and Peggy Barnes, changes to the bylaws were submitted to the board in January and the changes will be voted on by the membership in the March meeting. The general membership will be receiving the changes through the U.S. mail by the end of February, and will have an opportunity to review the proposed changes.

These changes that are being proposed will allow your board to operate in the most efficient way possible. In addition to operating more efficiently, the proposed changes will allow the board to be the best stewards of the Chapter's money.

On behalf of the board, I would encourage you to review the proposed changes and that you would be present at the March meeting when we take the vote on revising the bylaws.

This year our Chapter will have the honor of hosting the Tri-Chapter event with Los Angeles (Chapter 1), and Orange County (Chapter 67). We will be letting you know of some possible locations and by February, we will have a committee formed and ready to plan this great event.

In closing, I would like to share with you the privilege I have to serve on the board with such great board members. Every decision that is made by the board is for the betterment of this Chapter. I believe that our Chapter's greatest days are ahead of us and we have some awesome things in store for 2010. We will have plenty of opportunities for you to get involved this year, and the board will need all the help possible to make 2010 a banner year for Chapter 57.

Thank you for the opportunity to serve our chapter.

John Kalapp  
 President  
 Chapter 57



# IRWA CHAPTER 57—2010 EXECUTIVE BOARD

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<p><b>Education:</b> Sheryn Smay Real Estate Services Division City of Riverside (951) 826-5343 <a href="mailto:SSmay@riversideca.gov">SSmay@riversideca.gov</a></p> <p style="text-align: center;">and</p> <p>Marvin Cohen Best Best &amp; Krieger, LLP (951) 826-8440 <a href="mailto:Marvin.Cohen@BBKLaw.com">Marvin.Cohen@BBKLaw.com</a></p>	<p><b>Membership:</b> Griffin Wayne Lawyers Title Company (714) 749-0036 <a href="mailto:gwayne@ltic.com">gwayne@ltic.com</a></p>	<p><b>Utilities:</b> Nelson N. Stewart, MAI, SRA Mountain High Appraisal Services (909) 338-0160 <a href="mailto:nns1@verizon.net">nns1@verizon.net</a></p>
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Riverside Convention Center located at 3443 Orange Street, Riverside, California  
 951-787- 7950 11:30 am to 1:00 pm (First Wednesday of the month)  
 Cost for Lunch and Meeting/Presentation —\$16.00 (RSVP) or \$20 at the door

# LUNCHEON SPEAKER— Barry McDaniel



## Barry McDaniel

Mr. McDaniel has over three decades of experience with relocation consulting, project planning and engineering and construction management. Since 1982, Mr. McDaniel has directed large scale relocation

programs including program development, budgeting, relocation planning, relocation case implementation, property management, housing inspections, staff and client training, and quality control. These relocation activities were undertaken while employed with a public agency and while consulting to over 150 public agencies, including airport authorities, housing authorities, school districts, transportation agencies, redevelopment and economic development agencies, and other special districts.

As a Principal and Chief Executive Officer of OPC, Mr. McDaniel is responsible for setting company goals and objectives, communicating and building trust with clients and staff, planning and anticipating the needs of the Firm to better serve clients, tracking and reviewing feedback, selecting and retaining the most highly qualified staff in the industry, and fostering an atmosphere of success. The success of OPC is not only derived from its management, but from the ethics and standards of its founding principals.

The subject for today's presentation will be:  
 Move Planning



## A WORD FROM YOUR NEWSLETTER EDITOR

Wow, it's February and a very busy time of year. We have some changes going on in our Chapter, our new President, John Kalapp has firmly taken over the reins from Brad Bassi and is urging the horses into a gallop!

We will be voting on the change from calendar year to fiscal year for our accounting practices. This also means that our Executive Board will be elected for a term from July to June. Our current Board has agreed to stay for the additional 6 months, so that we can be on track in 2011.

If any of you voted on the forum, I want to thank you for supporting your Chapter.

We also will be voting on changes to the bylaws necessitated by this change to fiscal year accounting. Look for information in your mail later this month!

The website should be restored to its original address in February. I want to apologize if it has caused any inconvenience, we needed to let it expire to make some much needed changes to the registration.

The newsletters can still be viewed by going to the Chapter website at  
<http://irwachapter57.startlogic.com>

or the International website at  
<http://IRWAonline.org>

Jan Spindler  
 IRWA Chapter 57  
 Communications Chair

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# PEOPLE IN THE NEWS



This great picture of Mark Rieck, Sandy Grigg, Peggy Barnes and Brad Bassi was taken at the Tri-Chapter Luncheon held on December 8, 2009 at the Richard Nixon Library, sponsored by Chapter 67.

## AWARDS

- Large Employer: Luce Forward
- Small Employer: Robert Shea  
Perdue Real Estate Appraisal
- Sustained Member: Brad Bassi
- New Member(s): Joe Villegas  
And  
Lisa Dunham
- Professional of the Year:  
John Kalapp



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<b>Robert S. Perdue, MAI</b>	Chapter 57 Past President	<b>Brenda Fusco</b>	Appraiser
<b>Mark W. Routh</b>	Chapter 57 Past President	<b>Colleen Matthies</b>	Appraiser
<b>Brad Bassi</b>	Chapter 57 Past President	<b>Eric Schneider</b>	Appraiser
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# IRWA EDUCATION COURSES

Course #	Subject	Date(s)	Location	Chapter	Contact
400	Principles of Real Estate Appraisal	Feb. 1-2, 2010	Los Angeles, CA	1	Diane Dominguez 213-922-5253
103	Ethics and the Right of Way Profession	Feb. 16, 2010	San Diego, CA	11	Kathleen Hider, SR/WA 858-495-5373
900	Principles of Real Estate Engineering	Feb. 24-25, 2010	Riverside, CA	57	Kim Reed 951-683-2353
207	Practical Negotiations for US Federal Funded Land Acq	March 4-5, 2010	Irvine, CA	67	Brenda Loera 949-951-5263
800	Principles of Real Estate Law	March 17-18, 2010	San Diego, CA	11	Leeann Lardy, SR/WA, R/W-AMC 619-956-4825
602	Project Development and the Environmental Process	March 19-20, 2010	San Diego, CA	11	James Anthony, SR/WA 619-533-6509
201	Communications in R.E. Acquisitions	March 24-26, 2010	Downey, CA	1	William Larsen 562-803-7434
205	Bargaining Negotiations	March 29-30, 2010	Los Angeles, CA	1	Diane Dominguez 213-922-5253
209	Negotiating Effectively with a Diverse Clientele	Tentative April, 2010	Riverside, CA	57	
	56th Annual International Education Conference	June 27, 2010	Calgary, AB	IRWA	

FOR MORE CLASSES, PLEASE VISIT THE IRWA WEBSITE LOCATED AT  
[HTTP://WWW.IRWAONLINE.ORG/EDUCATION/COURSES.CFM](http://www.irwaonline.org/education/courses.cfm)  
 Free Online classes are also available for members



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2009 Eminent Domain Year in Review  
**Authored By: Rick E. Rayl**  
 01/19/10

Let's face it, 2009 was a pretty slow year in eminent domain, at least by recent standards. After the flurry of grass roots (and well funded) reform efforts, new legislation, and court decisions following 2005's *Kelo* decision, it is easy to forget that eminent domain is not an area likely to make national headlines on a regular basis.

In 2009, Californians saw no major reform efforts, no significant changes in the law, and only a handful of notable published decisions. This return to a pre-*Kelo* "normal" may be the most significant development in 2009. Still, it is worth looking back on the year's notable cases, and trying to forecast a little about what 2010 may look like.

One notable 2009 event: the Nossaman Eminent Domain and Valuation Group launched the California Eminent Domain Report blog in October. So, in addition to these periodic E-Alerts, you can keep on top of eminent domain and right-of-way issues through the blog, which is regularly updated.

You can sign up to receive emails when we post significant items, subscribe to a blog newsfeed (an RSS feed), or simply visit the blog at your convenience at [www.CaliforniaEminentDomainReport.com](http://www.CaliforniaEminentDomainReport.com). And, when you visit, please let us know what you think. We are always looking for feedback -- and new ideas for blog posts. Stop by and "join the conversation."

Now, on to the cases:

**Regulatory Takings**

In *Guggenheim v. City of Goleta* (9th Cir. 2009) 582 F.3d 996, the Ninth Circuit Court of Appeals concluded that the City of Goleta's rent control ordinance, which effectively transferred as

much as 90 percent of the property's value from the owners of a mobile home park to its tenants (who could then sell their units at a dramatic "premium" because of the guaranteed low rent), constituted a regulatory taking. The Court remanded the case back to the trial court to determine how much compensation the City must pay owners of the park.

**Business Goodwill**

In *Los Angeles Unified School District v. Pulgarin* (2009) 175 Cal.App.4th 101, the Court held that a business need not have a written lease in order to recover lost business goodwill. The court reasoned that, on its face, Code of Civil Procedure section 1263.510 (the statute governing goodwill claims) contains no such limitation, and that the correct inquiry is causation -- i.e., whether the taking caused the loss of goodwill, regardless of the nature of the tenancy. In reaching this conclusion, the Court recognized that a long-term lease and/or enforceable options to extend the lease term are both relevant to determining the existence and amount of goodwill. The Court specifically noted, however, that even in the absence of those things, a business owner could establish a goodwill claim if the business possessed sufficient security in its tenancy to warrant a finding that goodwill existed.

In *People ex rel. Dept. of Transportation v. Acosta* (2009) 178 Cal.App.4th 762, Caltrans sought to avoid a goodwill claim, arguing that the gas station franchisee seeking to recover lost goodwill was preempted from stating such a claim by the Petroleum Practices Marketing Act. The Act governs many petroleum supply contracts, and is intended to protect franchised gasoline distributors and retailers against arbitrary or discriminatory termination or non-renewal of franchises. The Court rejected Caltrans' claim, holding that the Act's restrictions have nothing to do with compensation in eminent domain cases. The Court upheld the franchisee's

Continued on Page 9

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Continued from Page 7

recovery of lost goodwill, and also awarded the franchisee its litigation expenses.

#### **Right to Take**

In *City of Stockton v. Marina Towers LLC, et al.* (2009) 171 Cal.App.4th 93, the Court held that the project description in the City's resolution of necessity was so vague, uncertain and sweeping in scope that it failed to specify a proper "public use." The breadth of the City's resolution was not surprising, as the City did not decide how it planned to use the property until after deciding to condemn it. According to the Court, however, the resolution's breadth wasn't just unsurprising, it was improper and qualified as a gross abuse of discretion, which defeated the City's right to take. To make matters worse, while the case was pending, the City figured out what it wanted to do with the property -- and it built a new stadium while the case was pending.

In light of the fact that a public use had attached by the time of the decision, the Court ordered a conditional dismissal, affording the City an opportunity to adopt a new resolution of necessity for the property that contained an adequate description of the "proposed" project. The Court also awarded the owner its reasonable litigation expenses in defending the action. (The subsequent chapter in the Marina Towers case commenced on December 30, 2009, as [the City amended its complaint after adopting a new resolution of the necessity](#). The case is still pending.)

In *Montara Water & San. Dist. v. County of San Mateo* (N.D. Cal. 2009) 598 F.Supp.2d 1070, a condemnation case took an interesting twist. A water district sought to condemn three wells owned by the County. The district obtained an order for prejudgment possession, but the condemnation action triggered a reversionary clause in the deed by which the County had originally obtained title. The prior owner -- the federal government -- exercised its right of reversion, once again becoming the owner of the wells that were the subject of the condemnation. Since the federal government now owned the wells, the water district lacked the right to condemn them, ending the condemnation action.

#### **Inverse Condemnation**

In *Hauselt v. County of Butte* (2009) 172 Cal.App.4th 550, the Court confronted a claim by a property owner that the County's modifications to a drainage channel subjected the owner's property to increased flooding. At issue was whether the Court should analyze the County's conduct under a strict liability or a "reasonableness" standard. The Court sided with the "reasonableness" camp, holding that the County was not liable unless it acted unreasonably. Because the owner failed to demonstrate that the County's conduct was unreasonable, the Court upheld the judgment finding no inverse condemnation liability.

#### **Discovery / Attorney Liability**

*Kearney v. Foley & Lardner* (2009) 566 F.3d 826 arose from an earlier state court condemnation action. After trial of the condemnation action, the property owner learned that the condemning agency had withheld key documents during discovery, and the owner thereafter sued the condemning agency's attorneys in federal court. The attorneys filed a motion to dismiss, which the district court granted. However, the Ninth Circuit Court of Appeals reversed, allowing certain of the claims to proceed on the merits against the attorneys. While there is as of yet no final decision on the merits, the mere fact that the Ninth Circuit is willing to entertain what is effectively a collateral attack on a state court condemnation action should cause concern

for practitioners considering an effort to withhold key information. And, if the attorneys are ultimately held liable, the case will generate significant interest.

#### **Easements by Necessity**

*Murphy v. Burch* (2009) 46 Cal.4th 157 was not actually a condemnation case, but the right to take became a key aspect of the Court's analysis. At issue was whether an easement by necessity can arise where the federal government creates a landlocked parcel. More particularly, where the federal government transfers part of the property it owns, leaving its remaining property landlocked, can a successor-in-interest in the now landlocked parcel claim an easement by necessity across the property transferred? The Court held that no easement of necessity could arise because strict necessity did not exist at the time the parcel became landlocked. The reason: at the time the landlocked parcel was created, its owner -- the federal government -- possessed the power of eminent domain, which could have been used to obtain access.

#### **What to Expect in 2010**

2009 probably gives us a pretty good idea what 2010 will look like. No major reform efforts appear anywhere on the horizon. Ads for "Proposition X" are not in our immediate future. We are likely to see new cases involving inverse condemnation/regulatory takings claims; this seems to be a pretty hot issue right now. On the other hand, until the economy picks up and developers become more active, we probably should not expect a barrage of such cases.

2010 may be the year we start to see published decisions about the changes to the prejudgment possession rules, along with the other legislative changes enacted in *Kelo's* aftermath. We may also see right-to-take challenges arising out of Proposition 99, though it may take another year or two for redevelopment agencies to explore its limitations at the risk of a public outcry.

In 2010, one key decision will be announced. The U.S. Supreme Court will issue its decision in *Stop the Beach Renourishment, Inc. v. Florida Department of Environmental Protection*. The case, heard in December 2009, generated significant media attention as the Court engaged in a lively debate that appeared to reveal a split of opinion on whether the State of Florida's effort to restore its beaches by adding sand in erosion-prone areas could convert private property from "beach front" to "beach adjacent." The State claims that the beach created by the added sand constitutes new public beach, while the property owners -- whose properties had previously extended to the mean high tide line -- claim that either (1) they now own the additional property created, or more realistically, (2) that the State must compensate them for the diminution in value their property suffers through the extinguishment of their littoral rights. Although it may not have any impact on California law, the decision is likely to generate considerable attention -- especially if the Court sides with the State and holds that the owners are not entitled to compensation. We will let you know how the Court rules when the decision is issued.

The other big development for eminent domain practitioners is that stimulus dollars -- and the overall economic recovery -- seem to be having an impact on infrastructure projects. In the last quarter of 2009, we saw a marked increase in eminent domain filings, and no reason exists to think that that trend will not continue. And, if the agencies are filing the lawsuits, the bulldozers will not be far behind. 2010 could be a very busy year.

Whatever happens, the Nossaman Eminent Domain and Valuation Team will continue to watch for trends and new developments, and will provide updates throughout 2010 as notable events occur. For the most current developments, we invite you to visit our blog, at [www.CaliforniaEminentDomainReport.com](http://www.CaliforniaEminentDomainReport.com)



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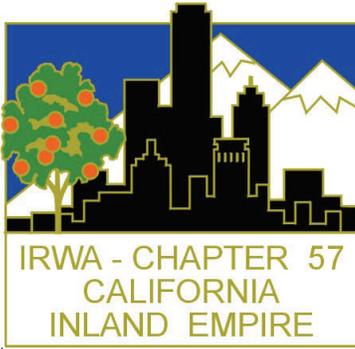
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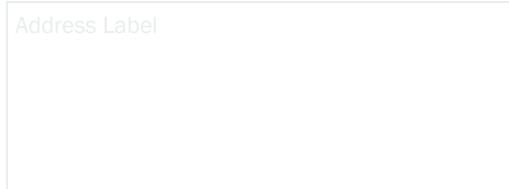
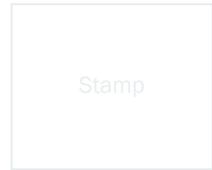
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