

#36.390

10/4/73

Second Supplement to Memorandum 73-86

Subject: Study 36.390 - Condemnation (Comprehensive Statute: Chapter 9--Compensation)

Attached are replacement copies of Sections 1263.320 and 1263.510, originally distributed with Memorandum 73-86. Each had inadvertently omitted from it a paragraph that the Commission at the September meeting had directed be added.

Respectfully submitted,

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§ 1263.320. Fair market value

1263.320. The fair market value of the property taken is the price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.

Comment. Section 1263.320 is new. It codifies the definition of fair market value that has developed through the case law. See, e.g., Sacramento etc. R.R. v. Heilbron, 156 Cal. 408, 409, 104 P. 979, 980 (1909), and Buena Park School Dist. v. Metrim Corp., 176 Cal. App.2d 255, 263, 1 Cal. Rptr. 250, 256 (1959). Although the phrase "the highest price estimated in terms of money" has been utilized in the case law definitions of fair market value, Section 1263.320 omits this phrase because it is confusing. No substantive change is intended by this omission.

The phrase "in the open market" has been deleted from the definition of fair market value because there may be no open market for some types of special purpose properties such as schools, churches, cemeteries, parks, utilities, and similar properties. All properties, special as well as general, are valued at their fair market value. Within the limits of Article 2 (commencing with Section 810) of Chapter 1 of Division 7 of the Evidence Code, fair market value

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may be determined by reference to (1) the market data (or comparable sales) approach, (2) the income (or capitalization) method, and (3) the cost analysis (or reproduction less depreciation) formula. No substantive change is intended by this deletion.

The standard provided in Section 1263.320 is the usual standard normally applied to valuation of property whether for eminent domain or for any other purpose. The evidence admissible to prove fair market value is governed by the provisions of the Evidence Code. See especially Evid. Code § 810 et seq. Where comparable sales are **used** to determine the fair market value of property, the terms and conditions of such sales may be shown in an appropriate case. See Evid. Code § 816.

For an adjustment to this basic fair market value standard in case of changes in value prior to the date of valuation, see Section 1263.330.

Article 6. Loss of Goodwill

§ 1263.510. Loss of goodwill

1263.510. The owner of a business conducted on property acquired by eminent domain, or on the remainder if such property is part of a larger parcel, shall be compensated for the loss of goodwill to the extent that such loss is caused by the acquisition of the property or the injury to the remainder and cannot reasonably be prevented by a relocation of the business and by taking those steps and adopting those procedures that a reasonably prudent person would take and adopt in preserving the goodwill.

Comment. Section 1263.510 is new to California eminent domain law. Under prior court decisions, compensation for business losses in eminent domain was not allowed. See, e.g., City of Oakland v. Pacific Coast Lumber & Mill Co., 171 Cal. 392, 153 P. 705 (1915). Section 1263.510 provides compensation for loss of goodwill in both a whole or a partial taking. See Bus. & Prof. Code § 14100 (goodwill is the expectation of continued public patronage). Goodwill loss is recoverable under Section 1263.510 only to the extent it cannot reasonably be prevented by relocation or other efforts by the owner to mitigate.

The determination of loss of goodwill is governed by the rules of evidence generally applicable to such a determination and not by the special rules relating to valuation in eminent domain contained in Article 2 (commencing with Section 810) of Chapter 1 of Division 7 of the Evidence Code. See Evid. Code § 811 and Comment thereto. Thus, the provisions of Evidence Code

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Sections 817 and 819 that restrict admissibility of income from a business for the determination of value, damage, and benefit in no way limit admissibility of income from a business for the determination of loss of goodwill.

Section 1263.510 compensates for goodwill loss only to the extent such loss is not compensated by Government Code Section 7262 (moving expense and moving losses for relocated business or farm operations; in lieu payments for business or farm operation that cannot be relocated without a substantial loss of patronage). See Section 1263.010 (no double recovery).