

Memorandum 80-13

Subject: Study K-100 - Evidence of Market Value (1980 Legislation)

The Commission is submitting to the 1980 legislative session a bill to extend the Evidence Code property valuation rules to all cases involving valuation of property. The rules are currently limited to eminent domain and inverse condemnation cases.

One of the rules, Evidence Code Section 813, provides that value of property may be shown only by opinion testimony of the property owner or an expert witness. The letter attached as Exhibit 1 points out an ambiguity in this rule--occasionally ownership of the property, as well as the value of the property, is in dispute so that it is not clear whether a person claiming disputed title may testify concerning the value of the property as an "owner".

The staff believes this ambiguity should be resolved by statute. It is appropriate that a person claiming to be the owner be permitted to testify; otherwise one party could preclude the other from testifying simply by raising a question as to title. The staff would amend Evidence Code Section 813 to read as follows:

813. (a) The value of property may be shown only by the opinions of:

- (1) Witnesses qualified to express such opinions;
- (2) The owner of the property or property interest being valued; and
- (3) An officer, regular employee, or partner designated by a corporation, partnership, or unincorporated association that is the owner of the property or property interest being valued, if the designee is knowledgeable as to the value of the property or property interest.

(b) Nothing in this section prohibits a view of the property being valued or the admission of any other admissible evidence (including but not limited to evidence as to the nature and condition of the property and, in an eminent domain proceeding, the character of the improvement proposed to be constructed by the plaintiff) for the limited purpose of enabling the court, jury, or referee to understand and weigh the testimony given under subdivision (a); and such evidence, except evidence of the character of the improvement proposed to be constructed by the plaintiff in an eminent domain proceeding, is subject to impeachment and rebuttal.

(c) For the purposes of subdivision (a), "owner of the property or property interest being valued" includes, but is not limited to, a person who reasonably claims to be the owner of the property if ownership is in dispute and a person entitled to possession of the property.

Comment. Subdivision (c) of Section 813 is amended to make clear that a person claiming to be an owner may testify as an owner notwithstanding a title dispute, provided the claim of ownership is reasonable. To determine reasonableness as a foundational fact the court need only ascertain that there is a reasonable basis for the claim and need not rule on the probable validity of the claim.

If the Commission approves this provision, the staff will have it amended into the evidence of market value bill before or at the time the bill is heard in its first committee.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

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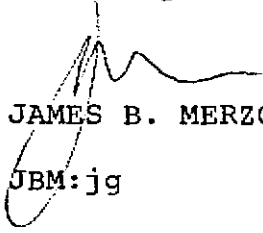
California Law Revision Commission
Stanford Law School
Stanford, CA 94305

RE: APPLICATION OF EVIDENCE CODE PROPERTY
VALUATION RULES IN NONCONDEMNATION CASES

Gentlemen:

I have reviewed the above referenced recommendation and have the following comments. In the past we have encountered difficulty in admitting opinion evidence as to the value of personal or real property from an individual who claims to be the owner thereof in situations where ownership of the property is contested. It would be helpful if the proposed legislation would clarify the right to permit evidence of value to be given by any party claiming ownership in a proceeding in which title to the property is a contested issue. As I understand the current law and proposed recommendation, the only lay witnesses who could give opinion of value are the owner and party in possession.

Sincerley,



JAMES B. MERZON

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