

An Appraiser's Role in Lease Valuations

By a bunch of lawyers from Allen Matkins

Who We Are

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An Overview of What We Will Cover

- The basic context: lease provisions
- Valuation scenarios required by leases
- Valuation definitions
- Valuation processes
- Compelling valuation processes
- Value arbitrations

The Basic Context

- Long-term leases or leases with options
- Most often (where an appraiser is needed), a ground lease. But can be found in any type of lease (e.g., retail or office lease, particularly one with options)
- Provides a mechanism for setting the new rent
- The lease provision controls, and these provisions can vary widely

Different Valuation Scenarios Required by Leases

- Fair market rental rate
- Vs. fee value
- Value fee as unimproved
- Value fee as partially improved
- Entitlements included or not

What Valuation Definition Applies?

- “Market value” v. “fair market value” (i.e., “most probable price” vs. “highest price”)
- The California Supreme Court, in *Sacramento S. R.R. Co. v. Heilbron* (1909) 156 Cal. 408, 409, established that the standard under California law for determining “fair market value” is the “highest price” definition **in all cases**.
- As the Legislative Committee Comments to section 1263.320 explain: “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. (See also *Forty-Niner Truck Plaza, Inc. v. Union Oil Company of California* (1997) 58 Cal.App.4th 1261, 1282.)

Different Types of Processes Established by Lease Provisions

- When landlord sets the value and then tenant disputes it; appraisals exchanged
- Baseball arbitration
- Neutral appraiser – how picked
- Two appraisers and a neutral
- Panel
- And who is appointed? Appraiser? Retired Judge? Attorney?

What Do You Do When the Valuation Process Isn't Moving Forward? How to Compel it.

- Declaratory relief
- Petition to compel arbitration
- Hearing/process
- Attorneys' fees

Wait—Isn't an Arbitration Some Legal Process? How is an Appraisal Process an Arbitration?

- Code of Civil Procedure section 1281(a) defines arbitration agreements to include “agreements providing for valuations, appraisals and similar proceedings.”
- “Arbitration can take many procedural forms” and requires only that there be “a third party decision maker, a final and binding decision, and a mechanism to assure a minimum level of impartiality with respect to the rendering of that decision.” (*Cheng-Canindin v. Renaissance Hotel Associates*)
- So long as your valuation provision meets these basic requirements, you’ve got an arbitration clause.

Value Arbitrations (You Know, Kinda Like What You See on TV)

- What does the process look like?
- Who are the parties?
- What can you expect as an appraiser?
- Fully neutral appraiser v. party appraiser: how does this change your interactions?
- Evidence? Deposition?

Thank you!

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