CONCURRING OPINION BY REIFURTH, J.

I concur in this court's decision because I believe that it applies the case law that we are obliged to follow on the question of whether and how a corporate officer may testify as to the value of corporate real property.[1] I write separately, however, to note that the precedent, which holds that while "the owner of the land taken . . . (is) qualified to express his opinion of its value merely by virtue of his ownership[,] . . . (a)n officer of a corporate owner is not qualified to testify as to value *unless he is an expert*," *City & Cty. of Honolulu v. Int'l Air Serv. Co.*, 63 Haw. 322, 332, 628 P.2d 192, 200 (1981) (emphasis added, citations & footnotes omitted), is a decidedly minority view on the question,[2] was unsupported by the sources to which it cited at the time of its adoption, and is wholly unfair when applied to one type of owner, but not all owners equally and uniformly. *See Weber v. West Seattle Land & Improvement Co.*, 63 P.2d 418, 420-21 (Wash. 1936) (permitting the corporation's managing officer to testify to the value of corporate property

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[1/] A substantial number of cases addressing this subject arise in the context of the government's "taking" of a corporation's real property for what is alleged to be a public purpose. Another substantial number of cases, however, like the instant case, involve the damage alleged to have occurred to the corporation's real or personal property because of the actions of other private parties. Takings cases are routinely cited to establish limitations upon a corporate representative's ability to testify in non-takings cases, just as in the inverse situation. *See infra* n. 3.

[2/] It appears that prior to the decision in *Int'l Air Serv. Co.*, thirty states had adopted a position on the issue of corporate officers testifying as to the value of corporate property. At the time, Ohio was one of only three of those states to even arguably equate the qualifications that a corporate officer must hold in order to testify to the value of corporate property to those of an expert. *City of Akron v. Hardgrove Enters., Inc.*, 353 N.E.2d 628, 632 (Ohio Ct. App. 1973) (holding that "a shareholder or officer of a corporation is not the owner and cannot ipso facto qualify as an expert on the value of corporate property[, but] must show that he is qualified because of knowledge gained independently, just as it is gained by an ordinary expert"). However, the Ohio Supreme Court has since held that an officer or shareholder of a corporation who shows sufficient knowledge of the property can testify to the value of the property without being qualified as an expert. *Tokles & Son, Inc. v. Midwestern Indemn. Co.*, 605 N.E.2d 936, 940-41 (Ohio 1992).

Two states required at the time, and continue still to require, that *anyone* testifying as to the value of real property must first be qualified as an expert. *See Hopper v. Pub. Serv. Coordinated Transp.*, 177 A. 430, 430 (N.J. 1935) (noting that only an expert on a given subject can express an estimate on the value of anything, real or personal, in any course of law); *Greene v. State Bd. of Pub. Rds.*, 149 A. 596, 598 (R.I. 1930) (stating that a non-expert cannot testify regarding the market value of land). The twenty-seven remaining states all permitted corporate officers to testify without being qualified as an expert.

because it is settled law that the owner of property may testify as to its value without qualification, and because corporations can give testimony only through an officer or agent, "then the one particular individual who controls and manages the corporation must of necessity, be permitted to testify in order that the rule may be general and uniform in its application"). Therefore, I encourage its reconsideration.

Hawai‘i's current rule permits a natural person who owns property to testify to his or her opinion as to the property's value without regard to whether the person is at all familiar with the price paid for the property, the condition of the property at the time of purchase, any improvements or deterioration of the property that might have occurred since it was purchased, the current market value of the property, or the price of any comparable property at the time of the testimony. *Int'l Air Serv. Co.*, 63 Haw. at 332, 628 P.2d at 200 ("the owner of land taken . . . (is) qualified to express his opinion of its value merely by virtue of his ownership."). At the same time, a corporate officer who "live[s] and breathe[s]" her corporation's property values may not testify unless she is first qualified as an expert. *Id.* The logic of such a distinction was as unclear in 1981 as it is today.

Whereas twenty-seven out of thirty states had concluded in 1981 that corporate officers could testify to the value of corporate property without being qualified as an expert, that number and the percentage of states so holding now has only increased. Today, thirty-eight of the forty other states having ruled on the question appear to hold that a corporate owner or representative who is familiar with the market value of the property in question may testify to the property's value without being designated as or hold the qualifications of an expert.[3]

[3/] Citing here to cases first holding in each jurisdiction that corporate officers may testify to the value of corporate property without first qualifying as an expert, whether because property owners are generally recognized as able to testify to property values or because of some additional experience or skill that the officer may hold with regard to the property. *See E-Z Serve Convenience Store, Inc. v. State,* 686 So.2d 351, 352 (Ala. Civ. App. 1996) (referring to the rule as codified in Ala. Code § 18-1A-192 stating "(a) Upon proper foundation, opinion evidence as to the value of property may (continued...)

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be given in evidence only by one or more of the following persons: . . . (3) A shareholder, officer, or regular employee designated to testify on behalf of an owner of the property, if the owner is not a natural person"); *Fairbanks North Star Borough v. Lakeview Enter., Inc.*, 897 P.2d 47, 55 n.14 (Alaska 1995) (showing that a landowner, even one that is a corporate officer, is entitled to testify to the value of its property); *Atkinson v. Marquart*, 541 P.2d 556, 559 (Ariz. 1975) (noting that "[a]s an officer, director, and shareholder of the corporation [appellee] could be considered an owner[,]" and "[i]t is well established that an owner may estimate the value of his real or personal property whether he qualified as an expert or not"); *Arkansas State Highway Comm'n v. Muswick Cigar & Beverage Co.*, 329 S.W.2d 173, 176 (Ark. 1959) (where the company's president was held to be a proper witness as to damages because he was familiar with property values); *City of Pleasant Hill v. First Baptist Church*, 82 Cal. Rptr. 1, 18-19 (Cal. Ct. App. 1969) (stating that the rule regarding property owner testimony was codified in Cal. Evid. Code § 813(a)(2); the statute amended in 1978 clarified the rule by stating that, "The value of property may be shown only by the opinions of any of the following: . . . (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." Cal. Evid. Code § 813(a)(3)); *Denver Urban Renewal Auth. v. Berglund-Cherne Co.*, 568 P.2d 478, 483 (Colo. 1977) (determining that when a person is a corporate officer and majority stockholder, he or she can testify regarding the value of his corporation's property without further qualification); *State v. J.H. Wilkerson & Son, Inc.*, 280 A.2d 700, 702 (Del. 1971) (mentioning in a case regarding the testimony of a corporate officer that while the corporate officer testified improperly, "[i]t is proper for a landowner to testify and give his opinion as to the market value of his land if he can establish his familiarity with its elements of value and the value of other comparable land in the neighborhood"); *Salvage & Surplus, Inc. v. Weintraub*, 131 So.2d 515, 516 (Fla. Dist. Ct. App. 1961) (stating that corporate ownership of a property does not automatically qualify a corporate officer to testify as to a property's value, rather the officer must show that he or she has knowledge of the property and its value); *Barlow v. Int'l Harvestor Co.*, 522 P.2d 1102, 1118 (Idaho 1974) (noting the well settled rule that the owner of property is a competent witness to the property's value, and that the corporate owner was qualified to testify on the net worth of the dealership before commission of the alleged tort); *City of DeKalb v. Nehring Elec. Works*, Inc., 353 N.E.2d 150, 152-53 (Ill. App. Ct. 1976) (applying its rule that there is no presumption that a witness is competent to give an opinion unless his or her competency is shown, to the testimony of a corporate officer); *Court View Centre, L.L.C. v. Witt*, 753 N.E.2d 75, 82 (Ind. Ct. App. 2001) (determining that although an owner may testify as to the value of its own property, the testimony from the managing partner was too speculative to support his claim regarding the value of the building); *Appeal of Dubuque-Wisconsin Bridge Co.*, 25 N.W.2d 327, 330 (Iowa 1946) (noting that an owner of property is deemed qualified to testify as to the value of a property based on ownership of the property, but an officer of a private corporation which owns the property is not qualified to testify to a property's value unless he shows he has knowledge of such value); *McCall Serv. Stations, Inc. v. City of Overland Park*, 524 P.2d 1165, 1173 (Kan. 1974) (noting that the president of a company is considered the owner of the property, and thus a competent witness to testify to the value of the property); *Commonwealth v. Raleigh*, 375 S.W.2d 384, 385 (Ky. 1964) (citing *Allen Co., Inc. v. Thoroughbred Motor Court, Inc.*, 272 S.W.2d 343 (Ky. Ct. App. 1954)) (modifying *Allen Co.*'s holding that an officer of a corporate land owner would not qualify as an owner would to state that a landowner is not qualified by mere ownership, and must qualify before testifying like all other witnesses); *Knox Lime Co. v. Maine State Highway Comm'n*, 230 A.2d 814, 828 (Me. 1967) (citing *Newton Girl Scout Council, Inc. v. Massachusetts Turnpike Auth.*, 138 N.E.2d 769, 775 (Mass. 1956)) (although status as corporate officer is not enough to qualify expression of opinion,
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demonstration of sufficient knowledge regarding the property is); *Oxon Hill Recreation Club, Inc. v. Prince George's Cty.*, 375 A.2d 564, 567 (Md. 1977) (noting that appellant correctly states the rule followed in Maryland, where "an individual owner is competent to express his opinion of value although he has not qualified as an expert . . . . However, the same principle does not extend to an officer of a corporation unless he can be shown to have some special knowledge as to value[.]"); *Newton Girl Scout Council, Inc.*, 138 N.E.2d at 775 (determining that "[a]n owner of real estate, . . . or an officer of a corporation, . . . must have knowledge of the real estate, apart from his ownership or mere holding of an office, which qualifies him to express an opinion as to its value."); *In re Acquisition of Land for the Cent. Indus. Park Project v. Chap Auto. Distribs., Inc.*, 370 N.W.2d 323, 324 (Mich. Ct. App. 1985) (applying the rule that a lay witness is permitted to testify to a property's value if he or she is familiar with the property and has knowledge of other properties in the immediate area, to the owner of a corporation); *McClure v. Village of Browns Valley*, 173 N.W. 672, 673 (Minn. 1919) (providing that the only basis for the president of the village council to testify to the value of a bridge be an intimate knowledge of the nature and quality of materials of the bridge); *Mississippi State Highway Comm'n v. Meridian Brick Co.*, 147 So.2d 302, 304 (Miss. 1962) (determining that the testimony of corporate officers was competent because the officer demonstrated that their long experience in that kind of business allowed them to form a correct judgment as to the value of the property); *St. Joseph Light & Power Co. v. Kaw Valley Tunneling, Inc.*, 589 S.W.2d 260, 269 (Mo. 1979) (holding that like individual owners, the testimony of a corporate officer who is able to value a property is admissible); *K & R Pship. v. City of Whitefish*, 189 P.3d 593, 604-05 (Mont. 2008) (applying the well-settled two-part "landowner-witness rule" in eminent domain cases, which allows a landowner to reasonably estimate the value of his property based on its current use, to the testimony of the partnership's managing partner); *First Baptist Church of Maxwell v. State*, 135 N.W.2d 756, 758-59 (Neb. 1965) (noting that a corporate officer does not have a presumption in his favor as in the case of an individual owner, rather, a corporate officer must show that he or she is familiar with the property and has such knowledge of values; the court further notes that generally a witness does not need to be an expert to testify to land values); *State v. Wells Cargo, Inc.*, 411 P.2d 120, 122 (Nev. 1966) (determining that a corporate officer was qualified to comment on land values because the corporate officer was the controlling and managing officer of the corporation); *Hellstrom v. First Guaranty Bank*, 209 N.W. 212, 216 (N.D. 1926) (allowing a managing officer of a corporation to testify as to the value of the corporation's real estate after showing sufficient knowledge of market value); *Tokles & Son, Inc.,* 605 N.E.2d at 940-41; *State v. S & S Properties*, 994 P.2d 75, 82 (Okla. Civ. App. 1999) (demonstrating that a principal partner can testify as to the property's value, and is not required to prove his or her qualifications); *State v. Assembly of God, Pentecostal, of Albany*, 368 P.2d 937, 942 (Or. 1962) (stating that a corporate president must either be qualified as an expert witness or as one having special knowledge regarding the value of the land); *Redev. Auth. of City of Harrisburg v. Young Women's Christian Ass'n*, 403 A.2d 1343, 1344-45 (Pa. Commw. Ct. 1979) (based on an act repealed in 2006, the court allowed a condemnee or an officer of a corporate condemnee to testify without further qualification); *State v. Livingston Limestone Co.*, 547 S.W.2d 942, 943-44 (Tenn. 1977) (reasoning that both an individual owner and a corporate officer, by reason of ownership of property alone, should be allowed to testify with respect to market value of a property so long as it is not based on pure speculation); *Reid Road Mun. Util. Dist. No. 2 v. Speedy Stop Food Stores, Ltd.*, 337 S.W.3d 846, 849 (Tex. 2011) (holding that corporate officers or employees with duties related to the corporate property may testify to the market value of the property); *Utah State Road Comm'n v. Steele Ranch*, 533 P.2d 888, 891 (Utah 1975) (stating that an owner may testify to the value of his or her property, and applying that rule to the testimony of defendant who owns corporate stock of the ranch, and lives adjacent to the ranch); *O'Bryan Constr. Co. v. Boise Cascade Corp.*, 424
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Hawai‘i is the *only* state to allow a natural person to testify without qualification to the value of his or her property while requiring that corporate officers testifying on the question of corporate property value must first be qualified as experts. And of the nine states yet to rule specifically on whether expert qualification is necessary before a corporate officer may testify to the value of corporate property, most apply the broader principle that a property owner may testify to the value of his or her property without being qualified as an expert.[4]

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A.2d 244, 248-49 (Vt. 1980) (determining in a copyright infringement case, that 12 Vt. Stat. Ann. § 1604, which states that "[t]he owner of real or personal property shall be a competent witness to testify as to the value thereof[,]" should be construed to apply to a corporate representative once he or she has shown to have familiarity with the property in question); *Snyder Plaza Props., Inc. v. Adams Outdoor Advert., Inc.*, 528 S.E.2d 452, 458 (Va. 2000) (demonstrating that corporate officers can give evidence regarding the value of property as long as they first show an acquaintance with the property); *Weber*, 63 P.2d at 420-21; *West Virginia Dep't of Transp. v. Western Pocahontas Props., L.P.*, 777 S.E.2d 619, 642 (W. Va. 2015) (noting that the court recognizes the admissibility of a landowner's opinion regarding the value of his or her land, and applying the rule to the testimony of a corporate officer); *Town of Fifield v. State Farm Mutual Auto. Ins. Co.*, 349 N.W.2d 684, 689-90 (Wis. 1984) (concluding that, since a corporation can only speak through its officers, a corporation and its officers are included under the law allowing an owner to testify regarding the value of their property); *Continental Pipe Line Co. v. Irwin Livestock Co.*, 625 P.2d 214, 217 (Wyo. 1981) (noting that the president of a corporation owning land is entitled to testify as to value of land), *superseded by* statute on other grounds.

[4/] *See, e.g.*, *Misisco v. La Maita*, 192 A.2d 891, 893 (Conn. 1963) (noting that it was well settled that "an owner of property is competent to testify as to its market value"); *Maree v. ROMAR Joint Venture*, 763 S.E.2d 899, 910 (Ga. Ct. App. 2014) (referring to precedent holding that "testimony as to market value is in the nature of opinion evidence," and that "[o]ne need not be an expert or dealer in the article in question but may testify as to its value if he has had an opportunity for forming a correct opinion" (quoting *Beale v. O'Shea*, 735 S.E.2d 29, 34 (Ga. Ct. App. 2012))); *Turner v. Murphy Oil USA, Inc.*, 759 F.Supp.2d 854, 857–58 (E.D. La. 2011) (applying federal law holding that "the owner of real property 'may testify as to [the] value [of her property],' . . . . Such testimony is to be deemed admissible as expert testimony under Rule 702 fo the Federal Rules of Evidence." (citations omitted)); *Eames v. S. Hew Hampshire Hydro-Elec. Corp.*, 159 A. 128, 131 (N.H. 1932) (noting that "opinion evidence of property values is now received whenever the trial court finds it will probably aid the trier"); *State ex rel. State Highway Comm'n v. Chavez*, 456 P.2d 868, 870 (N.M. 1969) (adopting what it characterizes as the majority rule that "a landowner may state his opinion as to the fair market value of his property" but adding that "should it be demonstrated that the witness has no real familiarity with the property . . . or that his estimates of value are predicated upon considerations which are not legally relevant, it would then be proper to strike the testimony and admonish the jury"); *Robertson v. Knapp*, 35 N.Y. 91, 92 (N.Y. 1866) (holding that although the opinion of the witness is generally not evidence, the value of property is one of the exceptions to the rule because the opinions of witnesses are admitted as to the value of property); *North Carolina State Highway Comm'n v. Helderman*, 207 S.E.2d 720, 725 (N.C. 1974) (holding that
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The treatise upon which the Hawai‘i Supreme Court relied in 1981 incorrectly stated that "a majority of courts hold that '(a)n officer of a corporate owner is not qualified to testify as to value *unless he is an expert*.'" *Int'l Air Serv. Co.*, 63 Haw. at 332 ((quoting 5 *Nichols on Eminent Domain* § 18.4[2], at 18-163, n.33 (3d ed. 1979 & Supp) (emphasis added)). *Supra*, n.3. Thus, the treatise did not support the court's adoption of the rule.

Moreover, the Hawai‘i Supreme Court's reliance on *Newton Girl Scout Council, Inc.* in *Int'l Air Serv. Co.* appears to have been misplaced as the case did not support the proposition for which it was cited (that "a majority of courts hold that '(a)n officer of a corporate owner is not qualified to testify as to value unless he is an expert.'"). Instead, *Newton Girl Scout Council, Inc.* parsed the qualification question a bit thinner, stating only that an owner of real estate or corporate officer "must have knowledge of the real estate, apart from his ownership or mere holding of an office, which qualifies him to express an opinion as to its value." *Newton Girl Scout Council, Inc.*, 138 N.E.2d at 775.[5]

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"[u]nless it affirmatively appears that the owner does not know the market value of his property, it is generally held that he is competent to testify as to its value even though his knowledge on the subject would not qualify him as a witness were he not the owner."); *Vigilant Ins. Co. of New York v. McKenney's, Inc.*, C.A. No. 7:09-cv-02076-JMC, 2011 WL 2415005 at *4 n.1 (D.S.C. 2011) (allowing the testimony of insurance company employee, not qualified as an expert, to testify to the value of insured's damaged real and personal property under the theory that "South Carolina courts have regularly allowed the opinion testimony of a non-expert who has sufficient knowledge of the value of the property in question or who has had ample opportunity for forming a correct oninion on it. . . . However, the witness must demonstrate that he or she has some source of knowledge of the value of the property in order to remove his or her opinion from the realm of mere conjecture." (citation omitted)); *Geo. A. Clark & Son, Inc. v. Nold*, 185 N.W.2d 677, 680 (S.D. 1971) (holding that the owner of the real property in question, "was qualified to testify as to its value . . . and in doing so he did not have to possess the qualification of an expert[.]" (citation omitted)).

[5/] The treatise editors appear to have recognized their mistake, and the current version of *Nichols on Eminent Domain*, no longer paints with such a broad brush. Instead, it states that "[a]n officer of a corporate owner is not qualified to testify as to value on the basis of mere ownership, *but must demonstrate knowledge of the factual considerations that relate to the value of the property or damages incurred by the remaining property*." 5 *Nichols on Eminent Domain*, Ch. 23 § 23.03 (3d ed. 2016) (emphasis added). Ironically, the editors of the 2016 edition cite to Hawai‘i and the *Int'l Air Serv. Co.* case, as well as *Newton Girl Scout Council, Inc.*, in support of the newly-
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The instant case is plainly distinguishable from *Int'l Air Serv. Co.* There, the Hawai‘i Supreme Court was unable to conclude that the trial court abused its discretion in disallowing the testimony of the corporate officer because there was a basis for determining that the corporate officer was not competent to testify. *Int'l Air Serv. Co.*, 63 Haw. at 332-33, 628 P.2d at 200-01. Although appellant there maintained that its president had a keen interest in the property and its development, appellant failed to provide sufficient information that the president's knowledge was current. *Id*. Under the same standard, in this case, the corporate officer demonstrated that she had current knowledge of the property because a majority of her job, what she "live[ed] and breathe[ed]," was to review the property's sales data, market sales data, and the property's sales targets. Accordingly, if not for *Int'l Air Serv. Co.*'s explicit requirement that corporate officers be qualified as experts before testifying to the value of corporate property, I would conclude that the Circuit Court did not abuse its discretion when it found the corporate officer competent to testify in this case.

The Hawai‘i Supreme Court has yet to address a case where a corporate officer demonstrates substantial knowledge regarding the value of corporate property, apart from holding an office. *See id.*; *Krog v. Koahou*, No. SCWC-12-0000315, 2014 WL 813038, *4 (Hawai‘i Feb. 28, 2014) (characterizing *Int'l Air Serv. Co.* as "holding that the trial court did not abuse its discretion in excluding the opinion testimony of an officer of a corporate owner because that opinion was of less probative value than that of an individual owner"). It may be, in light of the aforementioned characterization in *Krog*, that the Hawai‘i Supreme Court will distinguish this case from *Int'l Air Serv. Co.* and reverse our decision here without overturning *Int'l Air Serv. Co.* as to the stated rule. In my role on the court of appeals,

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stated rule despite the fact that the Hawai‘i Supreme Court explicitly adopted the 1979 version of the rule requiring that corporate officers be qualified as experts before they can testify and cited *Newton Girl Scout Council, Inc.* in support.

however, I agree with my fellow panelists that we are obliged to enforce the rule as announced by the supreme court and should not be too quick to distinguish unconditional explicit supreme court holdings on the basis of their factual context. *Cf*. *Hawaii Insurers Council v. Lingle*, 117 Hawai‘i 454, 463–65, 184 P.3d 769, 778–80 (App. 2008) (Watanabe, J., concurring) (observing that the supreme court's adoption of a three-part test for determining whether a charge constituted a fee or a tax in *State v. Medeiros*, 89 Hawai‘i 361, 973 P.2d 736 (1999) "seems to have focused on user fees and overlooked the nature of regulatory fees" and that "[o]ther courts examining the issue have adopted a broader test with regard to regulatory fees," while encouraging that the test be reexamined), *reversed in part*, 120 Hawai‘i 51, 64, 201 P.3d 564, 577 (2008) (determining that because *Medeiros* involved a service fee, it was distinguishable because the assessments at issue in *Lingle* were "clearly of a regulatory nature," and thus *Medeiros* was not binding).

Accordingly, I concur in this court's decision.