

1 **13-706. Entire taking of leasehold; damages to [~~landlord~~] lessor.**

2 The owner of the property taken is also the [~~landlord~~] lessor under a lease on the property
3 for a term ending _____.

4 The [~~owner-landlord~~] owner-lessor is entitled to recover money damages for the total of
5 the following:

6 [(1)]1. The net rental loss due for cancellation of the lease for the remaining term;

7 [(2)]2. The depreciated value of the improvements the [~~landlord~~] lessor would have
8 owned at the end of the lease term; and

9 [(3)]3. The fair market value of the land at the end of the lease term.

10 All damages awarded for the above items shall be discounted to present value as of the date
11 of taking.

12 The term [“]“net rental loss[”],” as used in this instruction, means the total rent payable by
13 the tenant less the total expenses, if any, payable by the [~~landlord~~] lessor for the balance of the
14 lease term.

15 USE NOTES

16 When this instruction is given, the blank in the first paragraph will need to be completed.
17 [As amended by Supreme Court Order No. S-1-RCR-2025-00126, effective for all cases pending
18 or filed on or after December 31, 2025.]

19 **Committee commentary.** — This instruction and the following instructions, relating to [~~landlord-~~
20 ~~tenant~~] lessor-tenant, are drafted in contemplation that the trial court will instruct on the separate
21 interests of each party and submit separate verdicts accordingly. In the past, many courts relied on
22 a single verdict representing the aggregate of all interests and estates, utilizing the theory that
23 property subject to a lease should be appraised and valued as unencumbered by the lease to ensure

1 that total damages awarded do not exceed the fee value. The committee is of the opinion that such
2 an approach ignores the reality that the existence of a currently enforceable lease has a definite
3 effect on the value of the property which any prospective buyer would consider. One author in
4 commenting on this problem states that to evaluate the property as a whole tends to plunge the
5 valuation question [“]“into a semantic bog which is not very helpful for analytical purposes[“].”
6 Alan N. Polasky, [The Condemnation of Leasehold Interests] *The Condemnation of Leasehold*
7 *Interests*, 48 Va. L. Rev. 477, 490 (1962)[. See also]; see also Hitchens, *The Valuation in*
8 *Condemnation Proceedings*, 17 U. Miami L. Rev. 245 (1963). The fact that, in a particular
9 situation, the separate valuation of the interests of the [~~landlord~~] lessor and the tenant may result
10 in a value exceeding the unencumbered fee is not due to the multiple ownership of the property,
11 but results from the particular nature of the leasehold itself, such as where land is leased to a
12 financially responsible tenant at a high rental. Nichols, *Eminent Domain* §§ 12.36, 12.42;
13 *Cleveland Allerton Hotel, Inc. v. Commissioner*, 166 F.2d 805 (6th Cir. 1948); [~~and~~] *In re*
14 *Appropriation for Hwy. Purposes*, [~~166 Ohio St. 249,~~] 142 N.E.2d 219 (Ohio 1957). In this
15 connection, the committee has carefully considered [~~Section 42-2-15 D NMSA 1978]~~ NMSA
16 1978, Section 42-2-15(D) (1959), which would permit a trial court to submit the claims of the
17 [~~landlord~~] lessor and the tenant in a single charge, and then apportion the award between the
18 separate interests. For the reasons above stated, the committee feels such an approach would deny
19 full and complete compensation. In addition, this approach would contravene NMSA 1978,
20 Section 42A-1-26 [NMSA 1978] (1981), where recovery of damages to the remainder tract in a
21 partial taking can include damages which [“]“might otherwise be deemed noncompensable.[“]”
22 *See* 6 Fla. Stat. Ann. § 73.071 for a comparable uniform instruction used in Florida.

1 Finally, it should be understood that this instruction assumes the nonexistence of a condemnation
2 clause in the lease. If the lease contains a condemnation clause, then this instruction will have to
3 be redrafted to conform therewith.

4 Ordinary business expenses, payable by the [~~landlord~~] lessor, might include utility expenses, taxes,
5 repairs, janitorial services, etc.

6 [As amended by Supreme Court Order No. S-1-RCR-2025-00126.]