

1 **13-708. Partial taking of leasehold; damages to [~~landlord~~] lessor.**

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

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

6 [(4)]1. The depreciated value of improvements taken and which the [~~landlord~~]
7 lessor would have owned at the end of the lease;

8 [(2)]2. The value of the land taken and which the [~~landlord~~] lessor would have
9 owned at the end of the lease; and

10 [(3)]3. The cost of restoration of the remaining premises, if required by the lease
11 agreement.

12 USE NOTES

13 This instruction, as indicated by the catchline, is to be used only when an issue is presented
14 by the lessor as to damages caused by the taking or in connection with the remaining property.
15 When this instruction is utilized, it should be used in conjunction with UJI 13-704 NMRA, which
16 would be applicable in determining the amount of compensation to be paid to lessor for the
17 property actually taken. In the event that multiple parties, leasing separate properties, are involved,
18 the words ["]“each lessor[”] should be used. In inverse condemnation proceedings, the words
19 ["]“lessor[”] and ["]“condemning authority[”] should be reversed since the condemnee is the
20 moving party.

21 [As amended, effective January 1, 1987; as amended by Supreme Court Order No. S-1-RCR-2025-
22 00126, effective for all cases pending or filed on or after December 31, 2025.]

1 **Committee commentary.** — [See] See State ex rel. State [~~Hwy. Comm'n~~] *Highway Commission*
2 *v. Hesselden Inv. Co.*, 1972-NMSC-071, 84 N.M. 424, 504 P.2d 634 [(1972)], as to the
3 applicability of [~~Section 42-1-1 (now 42A-1-1) NMSA 1978 et seq.~~] NMSA 1978, Sections 42-1-
4 1 to -39 (now Sections 42A-1-1 to -33 (1981)), to this instruction, which [ease] holds that the
5 instruction, as to damage to the remainder tract, should specifically set forth claimed consequential
6 or special items of damage. Under the provisions of [~~Section 42-1-1 (now 42A-1-1) NMSA 1978~~
7 ~~et seq.~~] NMSA 1978, Sections 42-1-1 to -39 (now Sections 42A-1-1 to -33 (1981)), general or
8 special benefits can be considered *only* as an offset against damages to the remaining property. *See*
9 *also* 6 Fla. Stat. Ann. § 73.071 for a comparable uniform instruction used in Florida.

10 As to damages, [see] see Board of County [~~Comm'rs~~] Commissioners v. Harris, 1961-NMSC-165,
11 ¶¶ 9, 10, 69 N.M. 315, 366 P.2d 710 [(1962)], where a change in highway grade, making access
12 difficult, was held compensable. *See also* [~~Board of Trustees~~] Bd. of Trs. v. Spencer, 1965-NMSC-
13 159, ¶ 2, 75 N.M. 636, 409 P.2d 269 [(1965)], dealing with disruption of irrigation water supply.

14 As to benefits, [see] see City of Albuquerque v. Chapman, 1966-NMSC-034, 76 N.M. 162, 413
15 P.2d 204 [(1966)]; Board of Trustees. v. Spencer, [~~supra~~] 1965-NMSC-159; Transwestern Pipe
16 Line Co. v. Yandell, 1961-NMSC-173, 69 N.M. 448, 367 P.2d 938 [(1961)]; and City of Tucumcari
17 v. Magnolia Petroleum Co., 1953-NMSC-046, 57 N.M. 392, 259 P.2d 351 [(1953)].

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