

1 **13-712. Fair rental value; definition.**

2 Fair rental value is considered to be the highest amount of cash a willing owner would take
3 and a willing tenant would offer for the lease of the property if it were offered for lease in the open
4 market for a reasonable time to find a tenant, leasing with knowledge of all the uses to which the
5 property was suitable or adaptable; the owner not being required to lease nor the tenant being
6 required to rent.

7 The rent actually paid is one factor which you may consider, along with all the other
8 evidence of fair rental value at the time of taking.

9 USE NOTES

10 This instruction should be used when there is an entire taking of property under lease for
11 determination of just compensation for the tenant. It should also be used when there has been a
12 partial taking and resulting damages to the tenant are to be determined, if the lease is not terminated
13 by the partial taking.

14 This instruction is to be used with UJI 13-707 and 13-709 NMRA.

15 **Committee commentary.** — The foregoing instruction has not, heretofore, been included in
16 uniform instructions or stock instructions because the rule of law, prior to the adoption of the
17 alternative procedures (~~[Section] NMSA 1978, §§ 42-2-1 [NMSA 1978 et seq.] to -24 (1959, as~~
18 amended through 1981)), was that only one award was given and the court apportioned that amount
19 between the [~~landlord~~] lessor and the tenant. This may still be the federal rule, but it is not the New
20 Mexico rule. Such procedure can result in inequities to the tenant and, therefore, the committee
21 has prepared an instruction comparable to the fair market value instruction which is applicable to
22 the [~~landlord~~] lessor. See committee commentary to UJI 13-707 and UJI 13-711 NMRA.

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