

1 **13-719. Access; loss of.**

2 The _____ (*insert name of condemning authority*) may control, regulate,
3 and designate reasonable access to and from the owner's property, but, if [~~sueh~~] the control,
4 regulation, or designation is unreasonable, the owner is entitled to compensation for [~~sueh~~] the
5 limitation of this access.

6 USE NOTES

7 [~~If the court finds a fact issue present on the question of reasonableness, then the above~~
8 ~~instruction would appear to be proper.~~] This instruction should be given in cases in which no land
9 is taken but the landowner seeks damages for lost or impaired access, if the court determines that
10 a question of fact exists regarding the reasonableness of the limitation on access. The instruction
11 should not be given in cases involving partial takings.

12 [As amended by Supreme Court Order No. S-1-RCR-2024-00065, effective for all cases pending
13 or filed on or after December 31, 2025.]

14 **Committee commentary.** — [~~With one exception, no New Mexico case is to be found~~
15 ~~allowing compensation for loss of access to an existing highway system. The exception is *Board*~~
16 ~~*of County Comm'rs v. Harris*, 69 N.M. 315, 366 P.2d 710 (1961), where a change of a highway~~
17 ~~grade, making access difficult, was held compensable. Nevertheless, in the decision next~~
18 ~~discussed, denying compensation, the court announced the principle contained in the above~~
19 ~~instruction on "Access".~~

20 ~~*Board of County Comm'rs v. Slaughter*, 49 N.M. 141, 158 P.2d 859 (1945), holds that~~
21 ~~damage to defendant's business, resulting from a change of a highway, diverting traffic away from~~
22 ~~defendant's property, is noncompensable.~~

1 A series of recent cases, developing as a result of interstate highway projects, uniformly
2 holds that the right of direct access to the highway is subject to reasonable traffic regulations. As
3 long as there is access to the highway system, although involving circuitry of travel (which may be
4 considerable), no damage results. As above mentioned, however, the court in these cases
5 recognizes the principle that an "unreasonable interference" with the property owner's access,
6 under the circumstances of a particular case, might become compensable. *See State ex rel. State*
7 *Hwy. Comm'n v. Mauney*, 76 N.M. 36, 411 P.2d 1009 (1966); *State ex rel. State Hwy. Comm'n v.*
8 *Lavasek*, 73 N.M. 33, 385 P.2d 361 (1963); *State ex rel. State Hwy. Comm'n v. Danfelser*, 72 N.M.
9 361, 384 P.2d 241 (1963), cert. denied, 375 U.S. 969, 84 S. Ct. 487, 11 L. Ed. 2d 416 (1964); *State*
10 *ex rel. State Hwy. Comm'n v. Silva*, 71 N.M. 350, 378 P.2d 595 (1962); and *State ex rel. State Hwy.*
11 *Comm'n v. Brock*, 80 N.M. 80, 451 P.2d 984 (1968); *Hill v. State Hwy. Comm'n*, 85 N.M. 689, 516
12 P.2d 199 (1973).] In *City of Albuquerque v. Tecolote Resources, Inc.*, 2024-NMCA-029, 544 P.3d
13 321, cert. dismissed (S-1-SC-40268, Mar. 4, 2024), the Court of Appeals reviewed the law
14 governing compensation for limitation on access to a landowner's property in light of Supreme
15 Court precedents as affected by the Legislature's enactment of NMSA 1978, Section 42A-1-26
16 (1981). The Court concluded that, while earlier precedent "commonly formulated the rule to make
17 the compensability of access damages hinge on whether post-taking access was reasonable," the
18 Legislature "clarif[ied] that precedents on compensability do not apply in partial takings cases"
19 and "dispensed with the reasonableness test in those cases." *Tecolote Res., Inc.*, 2024-NMCA-029,
20 ¶ 20. The Court therefore held that "if an owner in a partial takings case proves that the taking
21 caused access to their remaining property to be lost or impaired such that the fair market value of
22 their remaining property diminished, . . . the owner need not prove that the government's regulation
23 of traffic is unreasonable or that the adverse impact of that regulation on the owner's access is

1 unreasonable.” *Id.* ¶ 24. This instruction therefore is not applicable where a landowner seeks
2 compensation for limitation of access to the landowner’s remaining property following a partial
3 condemnation. But “in cases in which no land was taken from the landowner, but the landowner
4 seeks compensation for interference with their right of access, damages may only be awarded if
5 the interference is unreasonable.” *Id.* ¶ 23; *see Hill v. State Hwy. Comm’n*, 1973-NMSC-114, 85
6 N.M. 689, 516 P.2d 199.
7 [As amended by Supreme Court Order No. S-1-RCR-2024-00065.]