

1 **13-850. Damages to owner; contracts for construction.**

2 For [defective] [and] [or] [unfinished] construction [The reasonable cost of completing the
3 construction called for in the contract.]

4 [The difference between the value of the construction called for in the contract and the
5 value of the performance that has been received.]

6 USE NOTES

7 The two bracketed paragraphs reflect alternative measures of damages. The first bracketed
8 paragraph represents the favored measure of damages and should be used, unless the court finds
9 special circumstances require use of the second paragraph. The second bracketed paragraph is to
10 be used only where completion of the contract would involve unreasonable waste of money.

11 [Adopted, effective November 1, 1991.]

12 **Committee commentary.** — The purpose of contract damages is to, and the normal measure of
13 damages will, put the breached party in the same position [~~he or she~~ they] would have occupied
14 had the contract been completed. The first bracketed paragraph, providing damages measured
15 against what the reasonable cost of substituted performance would be, will typically accomplish
16 this goal and therefore should normally be given. *See* Restatement (Second) of Contracts § 348,
17 the substance of which has been adopted in New Mexico. *See Chavez v. Gribble*, 1972-NMSC-
18 026, ¶10, 83 N.M. 688, 496 P.2d 1084[~~(1972)~~]; *Montgomery v. Karavas*, 1941-NMSC-020, ¶ 14,
19 45 N.M. 287, 114 P.2d 776[~~(1941)~~] (adopting § 346 of the Restatement of Contracts, substantially
20 similar to § 348 of the Restatement (Second)).

21 The second bracketed paragraph should be given only in the unusual situation where the normal
22 measure of damages will cause economic waste; that is, where the cost of correcting the incomplete
23 or defective performance will be disproportionate to the added economic value to the building. *See*

- 1 *Jacob & Youngs v. Kent*, [~~230 N.Y. 239,~~] 129 N.E. 889 (N.Y. 1921) (tearing out nonconforming
- 2 piping in completed building would involve a cost disproportionate to the added value of putting
- 3 in conforming pipe).
- 4 [As amended by Supreme Court Order No. S-1-RCR-2025-00126.]