

Nationwide Measures of Damages to Property

Certain exceptions may apply, and law is subject to change. Contact White and Williams LLP for additional information, 215-864-6322.

■ ALABAMA

Real Property: The difference between the fair market value of the property immediately before the damage and the fair market value immediately after the damage. Birmingham Coal & Coke Co., Inc. v. Johnson, 10 So.3d 993 (Ala. 2008). For trespass actions, if the trespass is permanent, the measure of damages is the difference in the fair market value of the property before and after the trespass, based on the plaintiff's use of the property or adaptability of the property to a particular use. Borland v. Sanders Lead Co., 369 So.2d 523 (Ala. 1979). If the trespass is continuous, a plaintiff can recover for the use of his property or its fair rental value. Borland. A plaintiff may also be able to recover the cost of restoration if this, plus the rental value, is less than the diminution in value. Borland.

Personal Property: Generally, the difference between the reasonable market value of the property immediately before it was damaged and the reasonable market value immediately after it was damaged. However, when the property had no market value, the courts may consider other evidence, including the cost of repair or replacement. MAT Systems, Inc. d/b/a Corporate Design Systems v. Atchison Properties, Inc., 54 So.3d 371 (Ala. Civ. App. 2010).

■ ALASKA

Real Property: In the case of temporary damage to real property: (A) Diminution in value or, at the plaintiff's election, (B) the reasonable cost of restoration, as long as the restoration cost is not disproportionate to diminution and there is a reason personal to the owner for restoring the land to its original condition. Galipeau v. Bixby, 476 P.3d 1129 (Alaska 2020); Osborne v. Hurst, 947 P.2d 1356 (Alaska 1997). In the case of a permanent injury to land, measure is diminution in value. G & A Contractors, Inc. v. Alaska Greenhouses, Inc., 517 P.2d 1379 (Alaska 1974). If destruction of land is total, the owner may recover the entire value of the land. Ostrem v. Alyeska Pipeline Service Co., 648 P.2d 986 (Alaska 1982).

Personal Property: The lesser of (A) the reasonable repair cost, plus the diminution in value after the repair or (B) the diminution in value of the unrepaired property. ERA Helicopters, Inc. v. Digicon Alaska, Inc., 518 P.2d 1057 (Alaska 1974); City of Seward v. Afognak Logging, 31 P.3d 780 (Alaska 2001). The plaintiff may also recover for loss of use of equipment during the period required to make repairs. Burgess Constr. Co. v. Hancock, 514 P.2d 236 (Alaska 1973). The rental value is one permissible standard for measuring damages for loss of use. Burgess.

■ ARIZONA

Real Property: Where damage can be repaired, the cost of replacing such property and its loss of use during a reasonable time for repairs. City of Globe v. Rabogliatti, 210 P. 685 (Ariz. 1922). The cost of restoration, however, cannot exceed diminution in value. A.I.D. Ins. Serv. v. Riley, 541 P.2d 595 (Ariz. App. 1975). A landowner whose vegetation has been destroyed by a trespass may receive damages based on restoration costs, even exceeding diminution in market value of the real property on which the vegetation grew, if the vegetation had intrinsic value to the landowner. Dixon v. City of Phoenix, 845 P.2d 1107 (Ariz. App. 1992).

Personal Property: Permanent Damage: Diminution in value. S. A. Gerrard Co. v. Fricker, 27 P.2d 678 (Ariz. 1933); State v. Brockell, 928 P.2d 650 (Ariz. Ct. App. 1996). If goods have no market value, their actual worth to the owner is the test. Articles used in furnishing a home have a value when so used that is not fairly estimated by their value as secondhand goods on the market. Devine v. Buckler, 603 P.2d 557 (Ariz. Ct. App. 1979).

Repairable Damage: (A) Diminution in value or (B) if the property is repaired or restored, the reasonable cost of repair or restoration, with allowance for any difference between the original value and the value after repairs, plus loss of use during the repairs. Oliver v. Henry, 260 P.3d 314 (Ariz. Ct. App. 2011). An automobile owner can also recover for any proven residual diminution in value. Farmers Ins. Co. of Arizona v. R.B.L. Inv. Co., 675 P.2d 1381 (Ariz. App. 1983).

■ ARKANSAS

Real Property: Temporary/Repairable Damage: Cost of restoration or repair, even if exceeding diminution in value. Felton Oil Co., L.L.C. v. Gee, 182 S.W.3d 72 (Ark. 2004). Permanent/Not Repairable: The difference in market value before and after the injury. State v. Diamond Lakes Oil Co., 66 S.W.3d 613 (Ark. 2002).

Personal Property: The difference in the fair market value of the property immediately before and immediately after the occurrence. Southwestern Bell Telephone Co. v. Harris Co. of Fort Smith, 109 S.W.3d 637 (Ark. 2003). With automobiles, difference in market value may be established by cost of repairs, but only when other competent proof of market value is absent and the cost of repairs is the best available evidence of market value. McDaniel v. Linder, 990 S.W.2d 593 (Ark. Ct. App. 1999). Loss of use damages are also allowed in automobile cases. Ark. Code Ann. § 27-53-401; see Southwestern Bell (stating that, generally, loss of use damages are not allowed in cases involving personal property). The proper measure of damages for the conversion of a personal item is its fair market value at the time and place of the conversion. Allen v. Sargent, 2022 Ark. App. 14 (Ark. Ct. App. 2022).

■ CALIFORNIA

Real Property: The plaintiff can recover either the cost of repair or diminution in value, but not both. Safeco Ins. Co. v. J & D Painting, 21 Cal.Rptr.2d 903 (Cal. Ct. App. 1993); see Kelly v. CB & I Constructors, Inc., 102 Cal.Rptr.3d 32 (Cal. Ct. App. 2009). Ordinarily, it is the lesser of the two measures, unless there is a personal reason to repair the loss and the plaintiff can show that the repairs will actually be made. Safeco Ins. Co.

Personal Property: If not wholly destroyed: The lesser of (A) depreciation in value and loss of use, or (B) reasonable cost of repairs and loss of use during the repairs. If wholly destroyed: The market value of the property. Hand Electronics, Inc. v. Snowline Joint Unified School Dist., 26 Cal.Rptr.2d 446 (Cal. Ct. App. 1994). If after repairs, the property cannot be completely repaired: The difference in the fair market value of the property immediately before the accident and its fair market value after the repairs have been made plus the reasonable cost of making the repairs. Merchant Shippers Assn. v. Kellogg Express & Draying Co., 170 P.2d 923 (Cal. 1946).

See also Cal. Civ. Code § 3300, *et seq.*, on the measure of damages for certain types of claims.

■ COLORADO

Real Property: The general rule is diminution in market value. Board of County Comm'rs of Weld County v. Slovek, 723 P.2d 1309 (Colo. 1986). However, the proper measure of damages in tort is a matter of discretion for the trial court and there may be instances where, in order to reimburse the plaintiff for the actual loss suffered, the repair or restoration cost may be a more appropriate measure of damages. Board of County Comm'rs of Weld County (citing three examples); see Vista Resorts, Inc. v. Goodyear Tire & Rubber Co., 117 P.3d 60 (Colo. App. 2004) (allowing post-repair stigma damages).

Personal Property: Total Loss: Fair market value of the property at the time it was destroyed. Bullerduck v. Pritchard, 8 P.2d 705 (Colo. 1932). The court may deviate from fair market value and award whatever damages will reasonably "make the plaintiff whole." Bullerduck; Duggan v. Board of County Comm'rs of County Weld, 747 P.2d 6 (Colo. App. 1987) (allowing consequential, loss of use damages). Partial Loss: Diminution in fair market value from immediately before to immediately after the damage occurred. Goodyear Tire & Rubber Co. v. Holmes, 193 P.3d 821 (Colo. 2008). If fair market diminution does not adequately compensate the plaintiff, the courts may, at their discretion, award different damages to ensure adequacy. Goodyear.

■ CONNECTICUT

Real Property: Generally, the diminution in fair market value from immediately before to immediately after the damage occurred. However, the diminution in value may be determined by the cost of repairing the damage provided that the cost of repair does not exceed the pre-injury value of the property and does not enhance the value of the property over its pre-injury value. The selection of the repair measure of damages is a matter within the court's discretion. The measures are alternative measures of damages. Therefore, the plaintiff need not introduce evidence of both. Willow Springs Condo. Ass'n, Inc. v. Seventh BRT Dev. Corp., 717 A.2d 77 (Conn. 1998).

Personal Property: Total Loss: Fair market value of the property at the time it was destroyed. Allstate Ins. Co. v. Palumbo, 952 A.2d 1235 (Conn. App. Ct. 2008), *rev'd on other grounds*, 994 A.2d 174 (Conn. 2010). Partial Loss: Diminution in fair market value from immediately before to immediately after damage occurred. Youngset, Inc. v. Five City Plaza, 237 A.2d 366 (Conn. 1968). Generally, cost of repairs is considered adequate proof to demonstrate the diminution in fair market value caused by damage. Littlejohn v. Elionsky, 36 A.2d 52 (Conn. 1944).

■ DELAWARE

Real Property: Generally, the diminution in fair market value from immediately before to immediately after the damage occurred. Brandywine 100 Corp. v. New Castle County, 527 A.2d 1241 (Del. 1987). In an appropriate case, where the cost of repair is not disproportionate to the probable loss in value, the reasonable cost of restoration may be recovered. Brandywine 100 Corp.

Personal Property: Generally, the diminution in fair market value from immediately before to immediately after the damage occurred. Alber v. Wise, 166 A.2d 141 (Del. 1960).

■ DISTRICT OF COLUMBIA

Real Property: The general rule is that where the damaged property can be restored to the condition it was in prior to the injury, without cost disproportionate to the actual injury, the cost of restoration is the measure of damages. However, where that is impracticable, the correct measure of damages is the difference between the value of the property before and after the injury. Wentworth v. Air Line Pilots Ass'n, 336 A.2d 542 (D.C. 1975).

Personal Property: The basic measure of damages is the diminution in fair market value from immediately before to immediately after damage occurred. Where personal property is repairable, an alternative measure of damages is the reasonable cost of repairs necessary to restore the property to its former condition unless the cost of repairs exceeds the gross diminution in value. If a plaintiff can prove that the value of damaged property after its repair is less than the property's worth before the injury, the plaintiff can recover for both the reasonable cost of repair and the residual diminution in value after repair, provided that the award does not exceed the gross diminution in value. American Service Center Associates v. Helton, 867 A.2d 235 (D.C. 2005).

■ FLORIDA

Real Property: Where injury to land is of a more or less permanent nature, the measure of damages is usually the difference between the value of the land before and after the injury. Atlantic Coast Line R. Co. v. Saffold, 178 So. 288 (Fla. 1938). If damaged property can be restored, the cost of repairs or restoration is generally the measure of damages unless the cost of restoring the property would exceed the value thereof in its original condition, or the depreciation in the value thereof, or the actual damages sustained, or where restoration is impracticable. Davey Compressor Co. v. City of Delray Beach, 639 So.2d 595 (Fla. 1994).

Personal Property: Total Loss: Fair market value of the property at the time it was damaged. Allied Van Lines, Inc. v. McKnab, 331 So.2d 319 (Fla. Dist. Ct. App. 1976). If item has personal intrinsic value but no market value, other sources may be used to determine its value for measurement of damages. Carve v. Boca Raton Hotel and Club Ltd. Partnership, 676 So.2d 1020 (Fla. Dist. Ct. App. 1996). Partial Loss: Reasonable cost of repairs plus damages for loss of use. Florida Drum Co. v. Thompson, 668 So.2d 192 (Fla. 1996).

■ GEORGIA

Real Property: The method of calculating damages should be flexible, so as to reasonably compensate the injured party, and at the same time be fair to all litigants. The cost of repair and diminution in value are alternative, oftentimes interchangeable, measures of damage. If the plaintiff seeks to recover based on the cost of repair method, evidence of the fair market value of the improved property is not a necessary element of the plaintiff's claim for damages. John Thurmond & Associates, Inc. v. Kennedy, 668 S.E.2d 666 (Ga. 2008) (discussing a negligent construction and breach of contract cases). The cost to repair or restore land may be an appropriate measure of damages, even if the repair costs exceed the diminution in value, so long as restoration would not be an "absurd undertaking." Georgia Northeastern R. Co., Inc. v. Lusk, 587 S.E.2d 643 (Ga. 2003); cf. BellSouth Telecommunications, Inc. v. Helton, 451 S.E.2d 76 (Ga. Ct.

GEORGIA (continued)

App. 1994) ("While the correct measure of damages for injury to realty itself is the difference in value of the property before and after the injury, the appropriate measure of damages if the injury is solely to the structure or building is the cost of repairs.").

Personal Property: Total Loss: Diminution in market value from immediately before to immediately after the damage occurred. Hodges v. Vara, 603 S.E.2d 327 (Ga. Ct. App. 2004). **Partial Loss:** Reasonable cost of necessary repairs plus loss of use damages plus any residual diminution of the original value after repairs have been made not to exceed original market value of the property; OR diminution in value from immediately before to immediately after the damage occurred. Sykes v. Sin, 493 S.E.2d 571 (Ga. Ct. App. 1997); Canal Ins. Co. v. Tullis, 515 S.E.2d 649 (Ga. Ct. App. 1999) (requiring proof of the fair market value of the vehicle before the accident even in cases where the plaintiff chooses the cost of repairs as the measure of damage).

HAWAII

Real Property: Diminution in value. Bernard v. Loo Ngawk, 6 Haw. 214 (1877). A plaintiff may also recover stigma damages if remediation will not return the value of the property to its prior level because of a lingering negative public perception. Uy v. Spencer Homes, Inc., 135 Haw. 533 (Haw. Ct. App. 2015); see Haw. Rev. Stat. § 269-32 (damage to public utility property).

Personal Property: Loss or destruction: Market value (for retailers, wholesale value) of property lost or destroyed which actually or as precisely as possible compensates injured party. United Truck Rental Equip. Leasing, Inc. v. Kleenco Corp., 929 P.2d 99 (Haw. Ct. App. 1996); see Haw. Rev. Stat. § 269-32 (damage to public utility property). **If repairable:** Generally, the difference in value before and after the damage. Richards v. Kailua Auto Machine Service, 880 P.2d 1233 (Haw. Ct. App. 1994). Loss-of-use damages may be recovered (even in excess of actual value of property) but, generally, are limited to period of time reasonably necessary to 1) obtain replacement, 2) effect repairs, or 3) date upon which property is returned. Fukida v. Hon/Hawaii Serv. & Repair, 33 P.3d 204 (Haw. 2001). The different measures of damage to personal property are merely guides and should be adjusted as required to meet the goal of full compensation. Richards v. Kailua Auto Machine Service.

IDAHO

Real Property: If land is permanently injured, but not totally destroyed, owner is entitled to difference between fair market value before and after injury. If land is only temporarily injured, owner is entitled to recover amount necessary to put land in condition it was immediately preceding injury. In regard to temporary injury to property, if cost of restoration exceeds value of premises in their original condition, or in diminution in market value, the latter are limits of recovery. Ransom v. Topaz Mktg., L.P., 152 P.3d 2 (Idaho 2006); see Idaho Code ¶ 38-107(2) (forest or range fires). When plaintiff seeks restoration cost, defendant, who would reap benefit of capping damages at diminution in value, bears the burden of establishing the diminution in value. Farr W. Investments v. Topaz Mktg., L.P., 220 P.3d 1091 (Idaho 2009). Damages for trespass can include the cost of restoration that has been or may be reasonably incurred. In cases of trespass to land, the plaintiff need not prove actual harm in order to recover nominal damages. Radford v. Orden, 483 P.3d 344 (Idaho 2021).

Personal Property: Total: The value of the property at the time and place of its destruction. Skaggs Drug Centers, Inc. v. City of Idaho Falls, 407 P.2d 695 (Idaho 1965). **Partial:** The difference between its reasonable market value at the place of injury immediately before and immediately after such injury, or if such sum be less, the reasonable cost of repairs to restore the property to its previous condition. Skaggs Drug Centers, Inc. Where personal property has no market value, its value to owner may be used as basis for determining damages. Bratton v. Slinger, 460 P.2d 383 (Idaho 1969).

ILLINOIS

Real Property: Permanent Damage: Diminution in fair market value from immediately before to immediately after damage occurred. Hudlin v. City of East St. Louis, 591 N.E.2d 541 (Ill. App. Ct. 1992). **Temporary:** Cost of restoration. Arras v. Columbia Quarry Co., 367 N.E.2d 580 (Ill. App. Ct. 1977).

Personal Property: Permanent Damage: Fair market value of the property immediately before destruction. Harris v. Peters, 653 N.E.2d 1274 (Ill. App. Ct. 1995). Damages in absence of established fair market value may be ascertained based on replacement cost, value to plaintiff, or by other rational means and from such elements as are obtainable. Rajkovich v. Alfred Mossner Co., 557 N.E.2d 496 (Ill. App. Ct. 1990); see also Leith v. Frost, 899 N.E.2d 635 (Ill. App. Ct. 3d Dist. 2008) (plaintiff entitled to demonstrate value to him by such proof as circumstances admit). **Temporary Damage:** Reasonable cost of repairs. Beasley v. Pelmore, 631 N.E.2d 749 (Ill. App. Ct. 1994). But where cost of repairs exceeds fair market value, market value of property becomes ceiling on amount of recoverable damages. Wall v. Amoco Oil Co., 416 N.E.2d 705 (Ill. App. Ct. 1981).

INDIANA

Real Property: In the case of permanent injury to property, the measure of damages is the value of the property before the injury. City of Marion v. Taylor, 785 N.E.2d 663 (Ind. Ct. App. 2003). A permanent injury is one in which the cost of restoration of the property to its pre-injury condition exceeds the market value of the real estate prior to injury. A temporary injury is one which is not defined as permanent. Neal v. Bullock, 538 N.E.2d 308 (Ind. Ct. App. 1989). Damages for temporary or repairable injury are measured by the cost of the repair. After the plaintiff establishes the cost of repair, if the defendant wishes to characterize the damage as permanent rather than temporary, the defendant bears the burden of establishing the market value. City of Marion; General Outdoor Advertising Co. v. La Salle Realty Corp., 218 N.E.2d 141 (Ind. Ct. App. 1966).

Personal Property: Total Loss: Fair market value at the time property is destroyed. Ridenour v. Furness, 546 N.E.2d 322 (Ind. Ct. App. 1989). Indiana has long held that animals are personal property, and the fair market value of the animal at the time of loss is the appropriate basis for calculating damages. Liddle v. Clark, 107 N.E.3d 478 (Ind. App. Ct. 2018). **Partial Loss:** Diminution in fair market value from immediately before to immediately after damage occurred. Wiese-GMC, Inc. v. Wells, 626 N.E.2d 595 (Ind. Ct. App. 1993). The reduction in fair market value can be proved in one of three ways, depending on the circumstances: 1) by evidence of the fair market value before and the fair market value after the incident; or 2) by evidence of the cost of repair where repair will restore the personal property to its fair market value before the incident; or 3) by a combination of evidence of the cost of repair and evidence of the fair market value before the causative event and the fair market value after repair, where repair will not restore the item of personal property to its fair market value before the causative event. Wiese-GMC, Inc.

IOWA

Real Property: Permanent Damage: Fair and reasonable market value. State v. Urbanek, 177 N.W.2d 14 (Iowa 1970). **Temporary Damage:** The fair and reasonable cost of replacement or repair, but not to exceed the value of the property immediately prior to the loss or damage. Hendricks v. Great Plains Supply Co., 609 N.W.2d 486 (Iowa 2000).

Personal Property: Total Loss: Fair market value of property immediately before damage. Harlan v. Passot, 150 N.W.2d 87 (Iowa 1967). **Partial Loss:** Reasonable cost of repairs not to exceed the value of the property immediately before the damage occurred. Aq Partners, L.L.C. v. Chicago Cent. & Pacific R. Co., 726 N.W.2d 711 (Iowa 2007).

KANSAS

Real Property: Permanent Damage: Diminution in fair market value from immediately before to immediately after the damage occurred. Williams v. Amoco Prod. Co., 734 P.2d 1113 (Kan. 1987). **Temporary Damage:** Reasonable repair costs with interest, potentially including loss of use or rental value. Kiser v. Phillips Pipe Line Co., 41 P.2d 1010 (Kan. 1935). Damages for loss of use are limited to pecuniary value and do not include considerations of inconvenience and discomfort. McBride v. Dice, 930 P.2d 631 (Kan. Ct. App. 1997).

Personal Property: Total Loss: Diminution in fair market value from immediately before to immediately after damages occurred. Ultimate Chem. Co. v. Surface Transportation Int'l, Inc., 658 P.2d 1008 (Kan. 1983). Where damaged property has no real market value, replacement cost without a deduction for depreciation is the appropriate measure. Kansas Power and Light Co. v. Thatcher, 797 P.2d 162 (Kan. Ct. App. 1990). **Partial Loss:** Cost of repairing object to substantially its previous condition, plus reasonable amount to compensate for the loss of use, limited to period reasonably necessary to complete repairs. The recoverable amount may not exceed the object's pre-loss value. Nolan v. Auto Transporters, 597 P.2d 614 (Kan. 1979).

KENTUCKY

Real Property: Permanent Damage: Difference in the fair market value of the property immediately before and immediately after the injury. Cent. Ky. Drying Co. v. Commonwealth, 858 S.W.2d 165 (Ky. 1993). **Temporary Damage:** Reasonable costs of repair not to exceed the diminution in value caused by the injury. Ellison v. R & B Contracting, Inc., 32 S.W.3d 66 (Ky. 2000). A party who suffers temporary damage need not show a diminution in value, as it may be inferred from the value of repair costs. Ellison.

Personal Property: Total Loss: Reasonable value of the property at the time and place of destruction. Continental Ins. Co. v. Plummer, 904 S.W.2d 231 (Ky. 1995). For loss of certain household goods and clothing, measure of damages is the monetary value to the owner, for any reasonable purpose, not including sentimental value. Columbia Gas of Kentucky, Inc. v. Maynard, 532 S.W.2d 3 (Ky. 1976). **Partial Loss:** Diminution in fair market value, from immediately before to immediately after the injury. Ecklar-Moore Express, Inc. v. Hood, 256 S.W.2d 33 (Ky. 1953). A repair bill can be offered as evidence to show the difference in fair market value and, if unchallenged, is sufficient to sustain a verdict. McCarthy v. Hall, 697 S.W.2d 955 (Ky. Ct. App. 1985).

LOUISIANA

Real Property: The reasonable cost of repairing property to its original condition, or, at the election of the plaintiff, diminution of value from immediately before to immediately after the harm. But if repair costs are disproportionate to property value or economically wasteful, plaintiff is limited to diminution of value, unless plaintiff has a personal reason for seeking restoration. Roman Catholic Church of Archdiocese of New Orleans v. La. Gas Service Co., 618 So.2d 874 (La. 1993). In contract cases, if the contract sets the measure of damages, the contract will control. Corbello v. Iowa Production, 850 So.2d 686 (La. 2003).

Personal Property: Fair market value prior to the incident, less any applicable salvage value. Southern Message Service, Inc. v. Commercial Union Ins. Co., 647 So.2d 398 (La. Ct. App. 1994). Generally, recovery for damage to an automobile is limited to the cost of repair plus, if appropriate, stigma damages. Romco, Inc. v. Broussard, 528 So.2d 231 (La. Ct. App. 1988). However, if the vehicle is totally destroyed or the cost of repair exceeds its value, the measure of damages is the value of the vehicle less its salvage value. Romco, Inc. Loss of use damages may be recoverable for the period of time necessary to repair a vehicle. Romco, Inc. When property can be adequately repaired, the measure of damages is the cost of restoration, plus the loss of use during the time reasonably necessary for the repairs. The period of compensatory loss of use is the time required to secure the repair of the property in the exercise of proper diligence. Jensen v. Matute, 289 So. 3d 1136 (La. Ct. App. 2020).

MAINE

Real Property: The diminution in fair market value immediately before to immediately after the damage occurred. Borneman v. Milliken, 124 A. 200 (Me. 1924)

Personal Property: The diminution in fair market value from immediately before to immediately after the damage occurred. Collins v. Kelley, 179 A. 65 (Me. 1935). For damage to automobiles, the owner can recover reasonable rental costs actually expended, up to 45 days, including for destroyed vehicles. Me. Rev. Stat. tit. 14, § 1454.

MARYLAND

Real Property: At plaintiff's election, either the diminution in value from immediately before to immediately after the loss, or the cost of repairs not to exceed the diminution in value, unless the plaintiff has some personal reason to seek restoration. Regal Const. Co. v. West Lanham Hills Citizen's Ass'n, 260 A.2d 82 (Md. 1970). Additionally, a plaintiff is entitled to damages to compensate for the loss of use and enjoyment of the property, which can be calculated as a reasonable rental value. Superior Const. Co. v. Elmo, 102 A.2d 739 (Md. 1954). In breach of contract actions involving defective performance of a construction contract, damages are measured by the reasonable cost of repair as long as it does not involve unreasonable economic waste. If economic waste results, the proper measure of damages is the diminution of market value. Yaffe v. Scarlett Place Residential Condo., Inc., 45 A.3d 844 (Md. Ct. Spec. App. 2012).

Personal Property: Total Loss: Property's value at the time of destruction. Western Md. R.R. Co. v. Martin, 73 A. 267 (Md. 1909); Bastian v. Laffin, 460 A.2d 623 (Md. Ct. Spec. App. 1983). **Partial Loss:** The lesser of the difference between the value of the property immediately before the harm has been done and its value immediately thereafter or the reasonable cost of repairs. Bastian v. Laffin. With respect to motor vehicles, the measure of damages includes a reasonable allowance for loss of use. Berry v. Queen, 233 A.3d 42 (Md. 2020) (citing Washington, B. & A. E. R. Co. v. William A. Fingles, Inc., 109 A. 431 (1920)).

■ MASSACHUSETTS

Real Property: Permanent Damage: Diminution in fair market value from immediately before to immediately after damage occurred and/or restoration costs. Clean Harbors Environmental Services, Inc. v. Boston Basement Technologies, Inc., 916 N.E.2d 406 (Mass. App. Ct. 2009). **Temporary Damage:** Reasonable cost of repairs plus loss of use damages. Rattigan v. Wile, 841 N.E.2d 680 (Mass. 2006). Repair costs cannot exceed diminution in value. Guaranty-First Trust Co. v. Textron, Inc., 622 N.E.2d 597 (Mass. 1993).

Personal Property: Diminution in fair market value immediately before and immediately after damage occurred; or reasonable cost of restoration or replacement if diminution is unavailable or unsatisfactory as a measure of damages. Irwin v. Deresh, 2012 Mass. App. Div. LEXIS 43 (discussing pets). A vehicle owner should, if proven, also be able to recover stigma (aka Inherent Diminished Value) damages. See McGilloway v. Safety Ins. Co., 174 N.E.3d 1191 (Mass. 2021) (requiring an insurer to pay such damages).

■ MICHIGAN

Real Property: Permanent Damage: Diminution in fair market value from immediately before to immediately after damage occurred. Strzelecki v. Blaser's Lakeside Industries of Rice Lake, Inc., 348 N.W.2d 311 (Mich. Ct. App. 1984). **Temporary Damage:** Reasonable cost of repairs not to exceed diminution in fair market value from immediately before to immediately after damage occurred. Bayley Products, Inc. v. American Plastic Products Co., 186 N.W.2d 813 (Mich. Ct. App. 1971).

Personal Property: Total Loss: Fair market value at time of loss. Strzelecki v. Blaser's Lakeside Industries of Rice Lake, Inc., 348 N.W.2d 311 (Mich. Ct. App. 1984). **Partial Loss:** Reasonable cost of repairs not to exceed the pre-loss value of the property. Bluemlein v. Szepanski, 300 N.W.2d 493 (Mich. Ct. App. 1980).

■ MINNESOTA

Real Property: Permanent Damage: Diminution in fair market value from immediately before to immediately after damage occurred. In re Commodore Hotel Fire & Explosion Cases, 324 N.W.2d 245 (Minn. 1982). **Temporary Damage:** The lesser of two values: 1) diminution in fair market value from immediately before to immediately after damage occurred, or 2) reasonable cost of repairs. In re Commodore Hotel Fire & Explosion Cases. For contaminated properties, the owner may also be able to recover stigma damages. Dealers Mfg. Co. v. County of Anoka, 615 N.W.2d 76 (Minn. 2000).

Personal Property: Total Loss: Fair market value from immediately before damage occurred minus salvage value. Bartl v. City of New Ulm, 72 N.W.2d 303 (Minn. 1955). **Partial Loss:** Diminution in fair market value from immediately before to immediately after damage occurred or, at plaintiff's election, reasonable cost of repairs plus any residual diminution in original value after repairs have been made. Bartl.

■ MISSISSIPPI

Real Property: Permanent Damage: Diminution in market value immediately before and immediately after damage occurred. Check Cashers Exp., Inc. v. Crowell, 950 So.2d 1035 (Miss. Ct. App. 2007); Harper v. Hudson, 418 So. 2d 54 (Miss. 1982). **Temporary Damage:** Reasonable cost of repairs. Teledyne Exploration Co. v. Dickerson, 253 So.2d 817 (Miss. 1971); Harper v. Hudson; but cf. Miller v. Vicksburg Masonic Temple, 288 So.3d 372 (Miss. Ct. App. 2019) (discussing lateral support and damage to land and stating that a plaintiff can choose to prove either reasonable cost of replacement or repairs or diminution in value, and if he proves either of those measures with reasonable certainty, damages are allowable); Maslon v. Brown, 148 So.3d 27 (Miss. Ct. App. 2014) (stating that when the injury to land is temporary and can be restored, the appropriate measure of damages is the cost of restoration).

Personal Property: Total Loss: Fair market value of property before damage occurred. Mississippi Power Co. v. Harrison, 152 So.2d 892 (Miss. 1963). **Partial Loss:** Reasonable cost of repairs plus any residual diminution in original value after repairs have been made. Thomas v. Global Boat Builders & Repairmen Inc., 482 So.2d 1112 (Miss. 1986).

■ MISSOURI

Real Property: Permanent Damage: Diminution in market value from immediately before to immediately after damage occurred. Curtis v. Fruin-Colnon Contracting Co., 253 S.W.2d 158 (Mo. 1952). **Temporary Damage:** Reasonable cost of repair not to exceed fair market value diminution. Nelson v. State ex rel. Missouri Highway and Transp. Commission, 734 S.W.2d 521 (Mo. Ct. App. 1987).

Personal Property: Generally, diminution in market value from immediately before to immediately after damage occurred. Loss of use damages may also be available. Randall v. Steelman, 294 S.W.2d 588 (Mo. Ct. App. 1956). When personal property is entirely destroyed, the owner may recover the full value of the destroyed chattel. State v. Eyley, 663 S.W.3d 834 (Mo. Ct. App. 2023). In automobile cases, the cost of repairs and stigma damages may also be allowed. Rook v. John F. Oliver Trucking Co., 556 S.W.2d 200 (Mo. Ct. App. 1977).

■ MONTANA

Real Property: Permanent Damage: Generally, the difference between the value of property before and after an injury. Lampi v. Speed, 261 P.3d 1000 (Mont. 2011). **Temporary Damage:** Generally, the cost of restoring property to its pre-injury condition. Lampi. The plaintiff must establish (1) temporary injury and (2) personal reasons for restoring the property. Lampi.

Personal Property: Total Loss: Market value of property and loss of use during period reasonably required to replace it. Cuddy v. U.S., 490 F. Supp. 390 (D. Mont. 1980). **Partial Loss:** Generally, the cost of repair plus loss of use. Spackman v. Ralph M. Parsons Co., 414 P.2d 918 (Mont. 1966). However, the plaintiff is entitled to recover the damages that restore the injured party to its pre-tort position. Walden v. Yellowstone Elec. Co., 487 P.3d 1 (Mont. 2021) (allowing the cost of removing dead cows from the roadway in the absence of a more accurate method for calculating damages).

See also Mont. Code Ann. § 27-1-301, et seq., on the measure of damages for certain types of claims. Mont. Code Ann. § 25-1146 (stating that the plaintiff may recover any damages he may be entitled to).

■ NEBRASKA

Real Property: The cost of repair or restoration and any other consequential damages, not to exceed the market value of the property immediately preceding damage to the property. "L" Investments, Ltd. v. Lynch, 322 N.W.2d 651 (Neb. 1982); see de Vries v. L&L Custom Builders, Inc., 968 N.W.2d 64 (Neb. 2021) (allowing amounts expended to investigate a construction defect and determine the proper course of remediation). Goal is to award the amount that will restore the injured party to the status he occupied immediately before the injury. de Vries. In a

proper case, a court may award stigma damages so long as the cost of repairs and diminution of value do not exceed the value of the real estate before the injury. de Vries

Personal Property: Total Loss: If the reasonable cost of repair exceeds the difference in market value, the lost market value plus the reasonable value of the loss of use of the property for the reasonable amount of time required to obtain a suitable replacement. Chlopek v. Schmall, 396 N.W.2d 103 (Neb. 1986). **Partial Loss:** The reasonable cost of repair plus the reasonable value of the loss of the use of the property for the reasonable amount of time required to complete the repair. Chlopek.

■ NEVADA

Real Property: Permanent injury: Either 1) the value of the property less the salvage value or 2) the cost of replacement, at the discretion of the court. Montgomery Ward & Co. v. Stevens, 109 P.2d 895 (Nev. 1941). **Temporary injury:** The cost of restoring the property to its previous condition. A.B. Harvey v. The Sides Silver Mining Co., 1 Nev. 539 (1865). For residential construction defect cases, see Nev. Rev. Stat. § 40.655 (listing damages recoverable). For negligent misrepresentations in the sale or marketing of real property, see 1 Nev. Pat. J. Inst. Civ. 17.10

Personal Property: Damages based on the cost to repair personal property may be reduced by an amount equal to the diminution in the property's value from the damage, if the cost to repair the property exceeds the property's value's diminution. TM & KKH, Inc. v. First Judicial Dist. Court of State ex rel. Carson City, 2009 WL 1441657, 281 P.3d 1225 (Nev. 2009) (Table). With respect to irreparable property for which there is no market, factors to be considered include the property's original cost, the quality and condition of the property at the time of the loss, and the cost of reproduction, but exclude subjective considerations of sentimental value. Countrywide Home Loans, Inc. v. Thitchener, 192 P.3d 243 (Nev. 2008).

■ NEW HAMPSHIRE

Real Property: Cost of restoration if practicable; the difference between the value of the properties before and after the injury if not. Moulton v. Groveton Papers Co., 323 A.2d 906 (N.H. 1974).

Personal Property: Either (1) compensation for the difference between the value of the property before and after the harm or (2) the reasonable cost of repair with allowance for any difference between the value before and after the repairs, at the discretion of the property owner, as well as loss of use. Copadis v. Hamond, 47 A.2d 120 (N.H. 1946).

■ NEW JERSEY

Real Property: Generally, either the difference in value before and after injury or the reasonable cost to repair or restore the property; courts have discretion in applying the best measure for the circumstance. Mosteller v. Naiman, 7 A.3d 803 (N.J. Super. App. Div. 2010); St. Louis, LLC v. Final Touch Glass & Mirror, Inc., 899 A.2d 1018 (N.J. Super. App. Div. 2006). For cases involving trespass to land, such as where trees are removed, restoration costs may be awarded if there is a personal reason to the owner for restoring the property, but the upper limit of damages is "reasonableness." Kornbleuth v. Westover, 227 A.3d 1209 (N.J. 2020).

Personal Property: Partial Loss: The difference between the market value of the personal property before and after the damage occurred. Hyland v. Borras, 719 A.2d 662 (N.J. Super. App. Div. 1998); Associated Metals & Minerals Corp. v. Dixon Chem. & Research, Inc., 197 A.2d 569 (N.J. Super. App. Div. 1963); Jones v. Lahn, 63 A.2d 804 (N.J. 1949). **Total Loss:** The market value at the time of the loss; if the market value cannot be ascertained, then the reasonable value of the property to the owner may be used. Jones v. Lahn.

■ NEW MEXICO

Real Property: Permanent Damage: The diminution in the fair market value of the property from the period before the injury to the period after the injury. McNeill v. Burlington Res. Oil & Gas Co., 153 P.3d 46 (N.M. Ct. App. 2006). Permanent damage to real property takes into consideration the damage to the property in its entirety and is not limited to an evaluation of the damaged portion only. McNeill. **Temporary Damage:** The reasonable cost of repair or remediation. If the repair or remediation cost exceeds the diminution in the fair market value, then the diminution in fair market value should be applied. McNeill v. Burlington Res. Oil & Gas Co.

Personal Property: The lesser of: (1) the cost of repair plus depreciation after repairs, or (2) the reduction in fair market value from before the injury took place to after the injury occurred. Hubbard v. Albuquerque Truck Ctr. Ltd., 958 P.2d 111 (N.M. Ct. App. 1998).

■ NEW YORK

Real Property: Permanent Damage: The lesser of two values: (1) Cost of restoration, or (2) the decline in market value. Fisher v. Qualico Constr. Corp., 779 N.E.2d 178 (NY 2002). The plaintiff need only establish one measure. It is the defendant's burden to introduce evidence of another, lesser measure. Fisher (citing Jenkins v. Etlinger, 432 N.E.2d 589 (1982)); cf. Gibbs v. Porath, 145 A.D.3d 1221 (App. Div. 2016) (stating that a plaintiff may claim damages for permanent injury to real property based on restoration costs for permanent injury). **Temporary Damage:** Reasonable cost of repair but not to exceed the fair market value diminution. Mennito v. Town of Weyland, 56 N.Y.S.2d 654 (Sup. Ct. 1943). Where the injury is temporary, damages can include loss of use, evidenced by the decrease in rental value. Jenkins.

Personal Property: Permanent Damage: Fair market value of the property, taking depreciation into consideration. Kodak v. Am. Airlines, 805 N.Y.S.2d 223 (App. Term 2005). For automobiles, the fair market value of the car before the destruction, less the salvage value. Aurnou v. Craig, 584 N.Y.S.2d 249 (App. Div. 1992). For household goods for which there is no market, plaintiff may recover purchase price less adjustment for wear and tear. Ashare v. Mirkin, Barre, Saltzstein & Gordon, P.C., 435 N.Y.S.2d 438 (Sup. Ct. 1980). **Temporary Damage:** The difference between the market value of the property immediately prior to the loss and immediately after the injury occurred. Schwartz v. Crozier, 565 N.Y.S.2d 567 (App. Div. 1991). For items with a repair cost of up to \$2,000: cost of repair, with appropriate documentation. N.Y. C.P.L.R. R. 4533-a. For automobiles, reasonable cost of repairs may be used to establish damages, so long as repair costs do not exceed fair market value of vehicle prior to the injury. Schwartz v. Crozier.

■ NORTH CAROLINA

Real Property: Permanent Damage: The diminution in value from immediately before to immediately after the damage occurred. Feierstein v. N.C. Dept. of

NORTH CAROLINA (continued)

Env't & Natural Res., 712 S.E.2d 343 (N.C. Ct. App. 2011). Under North Carolina law, damages to land may be recovered using one of two measures: (1) the difference in market value before and after the injury, or (2) the cost of restoring the land to its pre-injury state. When the damage to land is "impermanent" in nature, diminution in value is not an appropriate measure of damages. BSK Enters. v. Beroth Oil Co., 783 S.E.2d 236 (N.C. Ct. App. 2015). For trespass to timber, the owner can recover the value of the property immediately before and after the cutting. King v. Duke Energy Progress, LLC, 854 S.E.2d 593 (N.C. Ct. App. 2021). Where property is owned for personal use, diminution in value of ornamental trees can be established with evidence of the replacement cost for the trees. King. For commercial timber, damages are either the difference in property value or double the value of the timber. King; N.C. Gen. Stat. § 1-539.1. **Temporary Damage:** Reasonable cost of replacement or repairs but not diminution in value. Casado v. Melas Corp., 318 S.E.2d 247 (N.C. Ct. App. 1984).

Personal Property: The difference between the fair market value immediately before and immediately after the damage occurred. Repair cost may be admitted as evidence of diminution. Sprinkle v. N.C. Wildlife Resources Commission, 600 S.E.2d 473 (N.C. Ct. App. 2004).

NORTH DAKOTA

Real Property: The lesser of (1) the cost of repair plus loss of use during repairs or (2) the diminution in value plus loss of use pending replacement. Roll v. Keller, 356 N.W.2d 154 (N.D. 1984).

Personal Property: The lesser of (1) the cost of necessary repairs and loss of use pending restoration, or (2) the difference in market value from before the injury took place to after the injury occurred and value of loss of use pending replacement. Sullivan v. Pulkrabek, 611 N.W.2d 162 (N.D. 2000). The plaintiff may choose which remedy is more appropriate when either method could be applied, and defendant must then prove the alternative is more suitable. Sullivan. See also N.D. Cent. Code § 32-03-01, *et seq.*, on the measure of damages for certain types of claims, such as: N.D. Cent. Code § 32-03-09.1 (the measure of damages for injury to property *not* arising from contract); N.D. Cent. Code § 32-03-09.2 (liability for willful damages to property); N.D. Cent. Code § 32-3-23 (damages for conversion of personalty); N.D. Cent. Code § 32-03-30 (damages for wrongful injuries to timber).

OHIO

Real Property: Permanent Damage: The difference of the market value of the property as a whole, including the improvements thereon, immediately before and immediately after the injury. City of Youngstown v. Rochford, 1935 WL 1831, 1935 Ohio Misc. LEXIS 1300 (Ohio Ct. App. 1935). Loss of use is also recoverable. Henry v. City of Akron, 501 N.E.2d 659 (Ohio Ct. App. 1985). **Temporary Damage:** Generally, the cost of repair, limited by the difference between the market value of the property before the injury and the market value of the property after the injury. Reeser v. Weaver Bros., Inc., 560 N.E.2d 819 (Ohio Ct. App. 1989). To noncommercial real estate, the reasonable cost of restoration is not limited by diminution of value. However, either party may offer evidence of diminution of market value as a factor bearing on the reasonableness of the cost of restoration. Martin v. Design Constr. Servs., Inc., 902 N.E.2d 10 (Ohio 2009). In commercial cases also, damages exceeding diminution may be recovered in appropriate circumstances. Reeser v. Weaver Bros. When permanent damage occurs to an item affixed to real property, it is considered to be only a temporary injury if the item can be replaced. Simmons v. Ohio DOT, No. 2013-00442, 2015 Ohio Misc. LEXIS 178 (Ohio Ct. Clms. 2015).

Personal Property: Not Repairable: The difference between the market value immediately before and after the damage. Rakich v. Anthem Blue Cross & Blue Shield, 875 N.E.2d 993 (Ohio Ct. App. 2007). Loss of use may not be recovered. Hayes Freight Lines v. Tarver, 73 N.E.2d 192 (Ohio 1947). **Repairable:** The reasonable cost or value of repairs. Albert v. BoatSmith Marine Service & Storage, Inc., 582 N.E.2d 1023 (Ohio Ct. App. 1989). Loss of use during repairs may also be recovered. Hayes Freight Lines v. Tarver.

OKLAHOMA

Real Property: Permanent Damage: The difference between the actual value immediately before and immediately after the damage is sustained. Cleveland v. Dyn-A-Mite Pest Control, Inc., 57 P.3d 119 (Okla. Civ. App. 2002). **Temporary Damage:** The reasonable cost of repairing the damage and restoring it to its former condition, not to exceed the depreciated value of the land itself. Thompson v. Andover Oil Co., 691 P.2d 77 (Okla. Civ. App. 1984). See also Houck v. Hold Oil Corp., 867 P.2d 451 (Okla. 1993). For damages associated with wrongful injuries to timber, see 23 Okla. St. § 72.

Personal Property: Total Damage: Difference between the actual value immediately before and immediately after the damage has been sustained. A.B.C. Const. Co. of OK v. Thomas, 347 P.2d 649 (Okla. 1959). **Partial Damage:** Reasonable cost of repairs and damages for the loss of use. Brennen v. Aston, 84 P.3d 99, 101 (Okla. 2003). Where it is shown that repairs failed to bring the property up to the condition prior to the damage, the measure shall be the cost of repairs plus the diminution in value of the property. Brennan; but cf. Frank Bartel Transp., Inc. v. State ex rel. Murray State Coll., 540 P.3d 480 (OK 2023) (stating that when a plaintiff shows that its property has diminished in value after repair, that subsequent loss of value may also be recoverable in a claim for property loss).

OREGON

Real Property: Permanent Damage: The difference between the value of the property immediately before the injury and its value immediately afterward. Hudson v. Peavey Oil Co., 566 P.2d 175 (Or. 1977). See also McCormick v. City of Portland, 82 P.3d 1043 (Or. Ct. App. 2004). The proper formulation may differ depending upon the circumstances. Hudson. **Temporary Damage:** The cost of restoration, where the injury is susceptible of remedy at a moderate expense and the cost of restoration is reasonable, or where the cost of restoration is less than the diminution in the value of property. Oregon Mut. Fire. Ins. Co. v. Mathis, 334 P.2d 186 (Or. 1959). See also McCormick. If the cost of repair is disproportionate to the diminution in value, the proper measure of damages will be diminution in value. Hanset v. General Const. Co., 589 P.2d 1117 (Or. 1979).

Personal Property: The difference between the value immediately before and immediately after the injury. Cutzforth v. Kinzua Corp., 517 P.2d 640 (Or. 1973).

PENNSYLVANIA

Real Property: Permanent Damage: Diminution in market value attributable to the conduct, product, or instrumentality giving rise to the liability. Pennsylvania Dep't of Gen. Servs. v. U.S. Mineral Products Co., 898 A.2d 590 (Pa. 2006). **Temporary**

Damage: Lesser of either the cost of repair or the market value of the affected property before the loss. Pennsylvania Dep't of Gen. Servs.

Personal Property: If irreparable: The actual market value at the time of the destruction. Pennsylvania Dept. of Gen. Servs. **If repairable:** The lesser of the cost of repairing the property and its actual market value at the time of its destruction. Pennsylvania Dept. of Gen. Servs.

RHODE ISLAND

Real Property: Permanent Damage: Difference between market value immediately before the loss and the market value immediately after the loss. Greco v. Mancini, 476 A.2d 522 (R.I. 1984); Tortolano v. DiFilippo, 349 A.2d 48 (R.I. 1975). **Temporary Damage:** The reasonable cost of repair. Greco v. Mancini; Tortolano v. DiFilippo.

Personal Property: Generally, the difference between the before and after fair market values. DeSpirito v. Bristol County Water Co., 227 A.2d 782 (R.I. 1967). For apparel and household goods which do not have a fair market value, recovery will be measured by the actual value to the owner, excluding sentimental value. Factors to consider include, but are not limited to, the cost of the item when new, the length of time in use, its condition at the time of the loss or injury, the expense to the owner of replacing it with another item of like kind and condition, and any other fact that may assist in determining the worth of the item to the owner at the time of loss or injury. DeSprito.

SOUTH CAROLINA

Real Property: Difference between the value of the entire premises before and after the injury. Joyner v. St. Matthews Builders, 208 S.E.2d 48 (S.C. 1974). If pollution results in temporary injury: The depreciation in the rental or usable value of the property caused by the pollution. Gray v. Southern Facilities, Inc., 183 S.E.2d 438 (S.C. 1971).

Personal Property: Generally, the difference between the market value of the property immediately before the injury and its market value immediately after the injury. Coleman v. Levkoff, 122 S.E. 875 (S.C. 1924). If the property had no actual market value, such as wearing apparel and household goods, the owner is entitled to recover its actual or reasonable value, or its special value to the owner, excluding sentimental value. Nelson v. The Coleman Co., Inc., 155 S.E.2d 917 (S.C. 1967).

SOUTH DAKOTA

Real Property: Permanent Damage: The difference in fair market value immediately before and immediately after the occurrence. Denke v. Mamola, 437 N.W.2d 205 (S.D. 1989). **Temporary Damage:** The reasonable cost of restoration or repair unless such cost is greater than diminution. Denke. When a plaintiff seeks damages for diminution in value, his loss is properly measured at the time of the injury to his property. When the measure of damages is cost of repairs, the focus is on the actual expenditures made by the plaintiff to make the repairs rather than the damaged property itself. Casper Lodging, LLC v. Zakco Commer. Consultants, Inc., 871 N.W.2d 477 (S.D. 2015).

Personal Property: Total Loss: The full market value of the property destroyed. Joseph v. Kerkvliet, 642 N.W.2d 533 (S.D. 2002). **Partial Loss:** The reasonable expense of necessary repairs, plus loss of use. Joseph.

TENNESSEE

Real Property: Permanent Damage: The difference between the reasonable market value immediately prior to and immediately after injury, but if the reasonable cost of repair is less than the depreciation in value, it is the cost of repair. Killian v. Campbell, 760 S.W.2d 218 (Tenn. Ct. App. 1988). **Temporary Damage:** Cost of repairs, not to exceed diminution in value. Barnett v. Lane, 44 S.W.3d 924 (Tenn. Ct. App. 2000). Loss of use (*i.e.*, rental value) during the period of the injury is also recoverable. Anthony v. Construction Products, Inc., 677 S.W.2d 4 (Tenn. Ct. App. 1984).

Personal Property: If the damages have been repaired then the measure of damages is the reasonable cost of repairs necessary for the restoration plus any loss of use pending the repairs. If the damages have not been repaired the property is not capable of repair so as to restore function, appearance, and value as they were immediately before the incident, then the measure of damages is the difference in the fair market value of the property immediately before the incident and immediately after the incident. Tire Shredders, Inc. v. Erm-North Cent., Inc., 15 S.W.3d 849 (Tenn. Ct. App. 1999).

TEXAS

Real Property: Permanent Damage: Generally, the difference in value of the property before and after the injury. ExxonMobil Corp. v. Lazy R Ranch, LP, 511 S.W.3d 538 (Tex. 2017); City of Tyler v. Likes, 962 S.W.2d 489 (Tex. 1997). **Temporary Damage:** The cost of repairs necessary to restore the property to its prior condition, not to exceed the loss in the land's value due to the injury. ExxonMobil: J&D Towing, LLC v. Am. Alternative Ins. Corp., 478 S.W.3d 649 (Tex. 2016).

Personal Property: Generally, the difference in the reasonable market value immediately before and immediately after the damage. Anthony Equipment Corp. v. Irwin Steel Erectors, Inc., 115 S.W.3d 191 (Tex. App. 2003); City of Tyler v. Likes; but see J&D Towing, LLC v. Am. Alternative Ins. Corp., 478 S.W.3d 649 (Tex. 2016) (stating that the owner of personal property that has been totally destroyed may recover loss of use damages in addition to the fair market value of the property immediately before the injury). For items with little/no market value, or which have their primary value in sentiment, it is the loss of value to the individual, but does not include mental anguish. City of Tyler v. Likes. For household goods, clothing and personal effects, factors which may be considered in determining loss of value include, *inter alia*, original cost and cost of replacement, the opinions of value given by qualified witnesses and the gainful uses to which the property has been put. Crisp v. Security Nat. Ins. Co., 369 S.W.2d 326 (Tex. 1963).

UTAH

Real Property: Permanent Damage: The difference between the value before the harm and the value after the harm. Walker Drug Co., Inc. v. La Sal Oil Co., 972 P.2d 1238 (Utah 1998). **Temporary Damage:** Repair cost plus loss of use compensation, not to exceed diminished value of property. Ault v. Dubois, 739 P.2d 1117 (Utah 1987).

Personal Property: Total Loss: Generally, market value at the time of destruction. Market value is equal to the retail price if the item is marketable. Cost of replacement may be recovered when that is the only evidence available. Ault v. Dubois. **Repairable:** The difference in value immediately before and immediately after injury. In some instances, proper repair will restore the market value of the

UTAH (continued)

property, but the plaintiff can recover not only the reasonable cost of repairs but also depreciation in market value, if any, after repair. Hill v. Varner, 290 P.2d 448 (Utah 1955).

■ VERMONT

Real Property: Permanent Damage: The difference between the fair market value of the property before and after the loss. Bean v. Sears Roebuck & Co., 276 A.2d 613 (Vt. 1971). Temporary Damage: The reasonable cost of repair, unless the costs are so inordinate and excessive as to be unreasonable and wasteful. Langlois v. Town of Proctor, 113 A.3d 44 (Vt. 2014).

Personal Property: Generally, the property's value before the injury less the value after the injury. Scheele v. Dustin, 998 A.2d 697 (Vt. 2010); Turgeon v. Schneider, 553 A.2d 548 (Vt. 1988). To establish the diminution in value, evidence of the reasonable cost of repairs made necessary by the accident, and as to the value of the property as repaired, may be admitted. Kinney v. Cloutier, 211 A.2d 246 (Vt. 1965).

■ VIRGINIA

Real Property: Fair market value diminution, if it can be reasonably ascertained and if it will adequately compensate the plaintiff for the injury done. If fair market value diminution cannot be ascertained or is inadequate, some other measure of damage must be applied. Younger v. Appalachian Power Co., 202 S.E.2d 866 (Va. 1974).

Personal Property: Unrepairable: Generally, the difference between the market value of the property immediately before and immediately after the accident. Averett v. Shircliff, 237 S.E.2d 92 (Va. 1977). Repairable: The measure of damage is the reasonable cost of repairs, with reasonable allowance for depreciation. Averett.

■ WASHINGTON

Real Property: Permanent damage: Generally, the difference between the market value of the property immediately before the damage and its market value immediately thereafter. Colella v. King County, 433 P.2d 154 (Wash. 1967).

Temporary damage: The lesser of the cost of repair plus any depreciation after repair or fair market value diminution. The plaintiff may also collect for loss of use during repairs. Colella v. King.

Personal Property: Total loss: The market value of the property destroyed or damaged. If the property does not have a market value, the measure of damages is the replacement cost. If the property cannot be replaced, then its value to the owner may be considered in fixing damages. McCurdy v. Union Pac. R. Co., 413 P.2d 617 (Wash. 1966). Damaged but not destroyed: The difference between the market value of the property before the injury and its market value after the injury. McCurdy.

■ WEST VIRGINIA

Real Property: Repairable: The cost of repairs plus consequential damages including loss of use; however, the cost of repairs may not exceed market value. Jarrett v. E. L. Harper & Son, Inc., 235 S.E.2d 362 (W.Va. 1977). Not repairable or repairs exceed market value: Fair market diminution plus consequential damages including loss of use. Jarrett v. E. L. Harper & Son, Inc. When residential real property is damaged, the reasonable cost of repair even if the costs exceed fair market value before the damage. Brooks v. City of Huntington, 768 S.E.2d 97 (W.Va. 2014). The owner of residential property may also recover related expenses stemming from the injury, annoyance, inconvenience and aggravation, and loss of use during the repair period. Brooks. Where necessary to make the plaintiff whole and to the extent not duplicative, the owner of a home can also recover for any residual diminution in value after repairs are made. Brooks; see W.Va.P.J.I. §§ 804-05.

Personal Property: Not Repairable: Fair market value at the time property is destroyed. Carbasha v. Musulin, 618 S.E.2d 368 (W.Va. 2005). Repairable: Reasonable cost of repairs plus consequential damages and any depreciation in value after repairs; however, the total of repairs and any depreciation cannot exceed the market value of the property before the loss. Ellis v. King, 400 S.E.2d 235 (W.Va. 1990).

■ WISCONSIN

Real Property: The lesser of the cost of repair or the fair market value diminution. Laska v. Steinpreis, 231 N.W.2d 196 (Wis. 1975). If cost of repair is awarded, plaintiff may also recover any residual diminution in value after repairs are complete. Hawes v. Germantown Mut. Ins. Co., 309 N.W.2d 356 (Wis. Ct. App. 1981).

Personal Property: The difference between the value before and the value immediately after the injury, under which the reasonable cost of repair may be shown as bearing upon the diminution in the value of the article resulting from the injury. Krueger v. Steffen, 141 N.W.2d 200 (Wis. 1966); cf. Smith v. Wis. Mut. Ins. Co., 880 N.W.2d 183 (Wis. Ct. App. 2016) (stating that the general rule for repairable property is that recovery is limited to the lesser of (1) the diminution in value and (2) the cost of repair, but that, in any event, recovery is limited to pre-injury fair market value). If cost of repair is awarded, plaintiff may also recover any residual diminution in value after repairs are complete, plus loss of use. Hellenbrand v. Hilliard, 687 N.W.2d 37 (Wis. Ct. App. 2004).

■ WYOMING

Real Property: No measure of damages is preferred over the other, but generally: Permanent Damage/Cost of Repair High: Difference between the value of the property before and after the injury. Anderson v. Bauer, 681 P.2d 1316 (Wyo. 1984). Temporary Damage/Cost of Repair Low: The cost of the repair has often been held to be the measure of damages. Anderson v. Bauer. When damage is to a dwelling house used for the personal purpose of the owner, the cost of repair may be recoverable even if it exceeds the diminution in value. The residual diminution of value after repairs is also recoverable. Anderson.

Personal Property: Total Loss: Generally, market value at the time and place the property was taken or destroyed. Reposa v. Buhler, 770 P.2d 235 (Wyo. 1989). Partial Loss: Generally, the difference between the value at the place the property was taken or destroyed immediately before and immediately after the injury. Meredith GMC, Inc. v. Garner, 328 P.2d 371 (Wyo. 1958).

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