

## Leasehold Damages

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Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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## Leasehold Damages

**Reference Number:** MTAS-1316

It has been held that a leasehold constitutes a compensable property interest under the law of eminent domain. <sup>[1]</sup> This interest has been characterized as the right of the lessee to remain in undisturbed possession of the leased premise until the expiration of his term. <sup>[2]</sup> A lessee's entitlement to damages is not limited to cases where the leasehold property is actually taken or destroyed, but extends even to cases where impairment of access to the leasehold property can be shown. <sup>[3]</sup> A tenant also is entitled to recover compensation where the condemnation of a part of the leased premises destroys the value of the leasehold. <sup>[4]</sup>

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### Notes:

[1] *City of Johnson City v. Outdoor West, Inc.*, 947 S.W.2d 855 (Tenn. App. 1996); *Shelby County v. Barden*, 527 S.W.2d 124 (Tenn. 1975); *Mason v. City of Nashville*, 155 Tenn. 256, 291 S.W. 1074 (1927); *Colcough v. Nashville and Northwestern Railroad Co.*, 39 Tenn. 171 (1858); *Lamar Advertising of Tennessee, Inc. v. Metropolitan Development and Housing Authority*, 803 S.W.2d 686 (Tenn. Ct. App. 1990); *Gallatin Housing Authority v. Chambers*, 50 Tenn. App. 411, 362 S.W.2d 270 (1962).

[2] *City of Nashville v. Mason*, 11 Tenn. App. 344 (1930).

[3] *Shelby County v. Barden*, *supra*.

[4] *Mason v. City of Nashville*, *supra*; *Gallatin Housing Authority v. Chambers*, *supra*.

## Valuation of The Leasehold

**Reference Number:** MTAS-1317

The lessee is entitled to any excess in value of his or her unexpired leasehold over and above the rentals that would be due for the unexpired term. <sup>[5]</sup> In other words, he or she is entitled to recover the fair market value of his or her leasehold interest less the rents he or she must pay to the landlord. <sup>[6]</sup> While evidence of a property owner's business profit normally is not allowed in condemnation cases, it may be admissible under the peculiar facts of a case to show the fair market value of the lessee's interest. <sup>[7]</sup> In the event of a partial taking of the leasehold, the lessee is entitled to recover the difference in value of the lease before the taking and the value of the lease after the taking. <sup>[8]</sup>

By statute, incidental damages to the leasehold include the lessee's moving expenses, <sup>[9]</sup> T.C.A. § 29-16-203, and where only a portion of the leasehold is acquired, any damage to the remainder of the leasehold. <sup>[10]</sup>

Where a partial taking of property subject to a leasehold occurs, the jury must first determine the total amount of just compensation for the taking, including the fair, reasonable cash market value of the property taken on the date of the taking, and incidental damages, if any, to that portion of the property remaining. <sup>[11]</sup> In determining the total fair market value of the fee, the jury should consider the leasehold as one element of the total fair market value of the property, as the leasehold indicates one available use of the property. <sup>[12]</sup> The total compensation is to include all losses suffered by all parties having an interest in the property affected and cannot exceed the value of the fee, unencumbered by the lease on the date of taking. <sup>[13]</sup> The jury then apportions the total compensation between the landlord and tenant. <sup>[14]</sup>

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### Notes:

[5] *State ex rel. Commissioner, Department of Transportation v. Teasley*, 913 S.W.2d 175 (Tenn. App. 1995); *City of Johnson City v. Outdoor West, Inc.*, *supra*; *Shelby County v. Barden*, *supra*; *Moulton v. George*, 208 Tenn. 586, 348 S.W.2d 129 (1961); *Mason v. City of Nashville*, *supra*; *State, Department of Highways and Public Works v. Texaco, Inc.*, 49 Tenn. App. 278, 354 S.W.2d 792 (1961).

- [6] *Gallatin Housing Authority v. Chambers, supra*; *City of Nashville v. Mason, supra*.
- [7] *Shelby County v. Barden, supra*; *Lebanon & Nashville Turnpike Co. v. Creveling*, 159 Tenn. 147, 17 S.W.2d 22 (1928); *State, Department of Highways and Public Works v. Texaco, Inc., supra*.
- [8] *State ex rel Smith v. Hoganson*, 588 S.W.2d 863 (Tenn. 1979).
- [9] *Nashville Housing Authority v. Hill*, 497 S.W.2d 917 (Tenn. Ct. App. 1972).
- [10] *Gallatin Housing Authority v. Chambers, supra*.
- [11] *State ex rel. Smith v. Hoganson, supra*; *Moulton v. George, supra*.
- [12] *State, Department of Highways and Public Works v. Texaco, Inc., supra*.
- [13] *State ex rel. Smith v. Hoganson, supra*.
- [14] *State ex rel. Smith v. Hoganson, supra*; *Shelby County v. Barden, supra*; *Moulton v. George, supra*.

## Apportionment

**Reference Number:** MTAS-1318

In the typical condemnation case involving leased premises, the property owner and lessee are joined as parties, and the lessee is awarded a portion of the damages assessed as the value of the total property condemned. As noted above, the total compensation awarded to the owner and lessee may not exceed the value of the unencumbered fee, and this value, once established, may not be further increased because of the existence of an unexpired lease at the time of condemnation.<sup>[15]</sup> In other words, the value of the leasehold is considered to be an integral part of the total value of the unencumbered tract of land.<sup>[16]</sup>

The jury should then apportion the total compensation (fair market value plus incidental damages) between lessor and lessee by determining the lessee's interest, which is the fair market value of the leasehold on the property minus rent actually called for in the lease plus incidental damages to the leasehold, with the remainder of the property's fair market value going to the lessor.<sup>[17]</sup> This formula for apportionment is applicable regardless of whether a long-term or short-term lease is involved.<sup>[18]</sup>

The condemner may specify in the condemnation petition the various interests of the lessor and lessee, apportion the amount deposited with the court, and settle the case with either the lessor or the lessee.<sup>[19]</sup> If the condemner follows this procedure, the lessee or lessor may then withdraw its amount in full satisfaction of its claim.<sup>[20]</sup>

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### Notes:

[15] *State ex rel. Smith v. Hoganson, supra*; *State ex rel. Shaw v. Shofner*, 573 S.W.2d 169 (Tenn. Ct. App. 1978); *State ex rel. Department of Transportation, Bureau of Highways v. Gee*, 565 S.W.2d 498 (Tenn. Ct. App. 1977).

[16] *State, Department of Highways and Public Works v. Texaco, Inc., supra*.

[17] *State ex rel. Smith v. Hoganson, supra*; *Shelby County v. Barden, supra*; *Moulton v. George, supra*; *Mason v. City of Nashville, supra*; *State, Department of Transportation, Bureau of Highways v. Gee, supra*; *Gallatin Housing Authority v. Chambers, supra*; *State, Department of Highways and Public Works v. Texaco, Inc. supra*; *City of Nashville v. Mason, supra*.

[18] *State ex rel. Department of Transportation, Bureau of Highways v. Gee, supra*.

[19] *State ex rel. Moulton v. Burkhart*, 212 Tenn. 352, 370 S.W.2d 411 (1963).

[20] *State ex rel. Moulton v. Burkhart, supra*.

## Appeal

**Reference Number:** MTAS-1319

Both the property owner and the lessee have an independent right to appeal the amount of damages awarded; joinder of parties is not necessary.<sup>[21]</sup> On appeal, the court may increase the award to the appellant as long as it determines that the initial award did not accurately reflect the fair market value of

the unencumbered fee <sup>[22]</sup> or did not reflect the total aggregate amount of incidental damages. <sup>[23]</sup>  
Thus, any relief granted on appeal must be through an increase of the total award rather than a  
reallocation of the lower court's award. <sup>[24]</sup>

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**Notes:**

[21] *State ex rel. Shaw v. Shofner, supra; State, Department of Highways v. Hurt*, 63 Tenn. App. 689, 478 S.W.2d 775 (1972).

[22] *State, Department of Highways v. Hurt, supra*.

[23] *State ex rel. Shaw v. Shofner, supra*.

[24] *State ex rel. Shaw v. Shofner, supra; State, Department of Highways v. Hurt, supra*.

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