



## Valuation of The Leasehold

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

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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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*.

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