



## Apportionment

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Dear Reader:

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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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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>

### 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*.

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