

810.62 PROPERTY DAMAGES—DIMINUTION IN MARKET VALUE.

The plaintiff's actual property damages are equal to the difference between the fair market value of the property immediately before it was damaged and its fair market value immediately after it was damaged. The fair market value of any property is the amount which would be agreed upon as a fair price by an owner who wishes to sell, but is not compelled to do so, and a buyer who wishes to buy, but is not compelled to do so.

(If evidence is introduced regarding the actual or estimated cost of repair, the following paragraph should be used: Evidence of [estimates of the cost to repair] [the actual cost of repairing] the damage to the plaintiff's property may be considered by you in determining the difference in fair market value¹ immediately before and immediately after the damage occurred.)²

¹. If no evidence of fair market value of the damaged property is introduced, then plaintiff may recover only nominal damages. *Heaton-Sides v. Snipes*, 233 N.C. App. 1, 6, 755 S.E.2d 648, 652 (2014); *Cockman v. White*, 76 N.C. App. 387, 391, 333 S.E.2d 54, 56 (1985).

². *Smith v. White*, 213 N.C. App. 189, 192, 712 S.E.2d 717, 719 (2011) (citing *U.S. Fidelity & Guaranty Co. v. P. & F. Motor Express, Inc.*, 220 N.C. 721, 18 S.E.2d 116 (1942)). Both evidence of actual costs to repair and estimates of the cost to repair are competent evidence. As the Court notes in *Smith*, whether evidence of an estimate of the cost of repairs is as persuasive as evidence of the cost of the actual repairs is a question related to weight rather than its competency. *Id.* at 193, 712 S.E.2d 717.