

109.64 DEFENDANT'S PROPERTY DAMAGES (COUNTERCLAIM) - NO  
MARKET VALUE-COST OF REPLACEMENT OR REPAIR.

*NOTE WELL: Use this instruction where there is no market by which the degree of damage to the property can be measured.<sup>1</sup> Where repair or replacement does not provide a realistic measure of the defendant's loss (such as where the property cannot be repaired or replaced, or where it has primarily or exclusively intrinsic value), use N.C.P.I.-Civil 109.66.*

The defendant's actual property damages are equal to the amount reasonably needed to [repair the damage to the property]<sup>2</sup> [replace the property damaged]<sup>3</sup>, less [the salvage value of the [property] [parts replaced]] [the accumulated depreciation<sup>4</sup> on the property replaced].<sup>5</sup>

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1. When the property cannot be valued by reference to a market, the measure of damages may properly be gauged by the cost of repair. See discussion in *In re Appeal of Amp., Inc.*, 287 N.C. 547, 570-574, 215 S.E.2d 752 (1975). Defendant's recovery for repair should be limited by the value of the property damaged. *Carolina Power and Light Co.*, 261 N.C. at 712, 136 S.E.2d at 105.

2. If the property replaced needed repairs at the time it was destroyed, the measure of damages would be replacement cost less the reasonable cost of repairs. *Beaufort & Morehead R. Co. v. The Damyank*, 122 F.Supp. 82 (E.D.N.C. 1954) (railroad bridge over river damage by ship).

3. If manufacturing materials with no market value are destroyed, the measure of damages should include the replacement cost of the raw materials. *In re Appeal of AMP, Inc.*, 287 N.C. 547, 570-74, 215 S.E.2d 752, 765-768 (1975).

4. No deduction for depreciation should be made unless the evidence would justify a finding that the defendant will eventually recapture the worth of the depreciation. *Carolina Power and Light Co. v. Paul*, 261 N.C. 710 (1964); *In re Appeal of Amp, Inc.*, 287 N.C. 547, 570-574, 215 S.E.2d 752 (1975).

5. *State v. Maynard*, 79 N.C. App. 451, 339 S.E.2d 666 (1986).