**20.16 LOSS OF USE OF PROPERTY**

The (first, second, etc.) item of claimed loss is the loss of use of the (insert item of property).

The plaintiff is entitled to be compensated for the fair value of the use of the (insert item of property) during the period (reasonably necessary to repair it) (plaintiff was unable to use it) (it was held by the defendant) (reasonably necessary to replace it). In a moment I will explain how to measure the value of the loss of use.

# **Use Note**

This instruction should be used whenever loss of use of property is properly claimed as an item of damage. It should be used with Instruction 20.17B (Value of Loss of Use of Property).

In some situations, plaintiff may claim both loss of use and property damage. Where property damage is also claimed, Instruction 20.15 should be given.

# **Comment**

Damages may be awarded for loss of use of personal property. *See, e.g*., *Kenai Chrysler Center, Inc. v. Denison*, 167 P.3d 1240, 1250 (Alaska 2007) (car improperly withheld following rescission of trade-in); *Alaska Construction Equip. Inc. v Star Trucking Co*., 128 P.3d 164, 168-69 (Alaska 2006) (destruction of truck); *Burgess Construction Company v. Hancock*, 514 P.2d 236, 238 (Alaska 1973) (loss of use during repair of tractor-trailer units); *Ben Lomond, Inc. v. Campbell*, 691 P.2d 1042 (Alaska 1984) (replevin of generator).

When personal property is destroyed, the owner may recover loss of use damages for the period of time that is reasonably required to obtain a suitable replacement for the property. This period may include the time that is reasonably necessary to determine whether the property can be repaired. *Alaska Construction Equip.*, 128 P.3d at 168-69. Loss of use damages cannot be claimed for any period beyond what is reasonably necessary to replace the property. *Kenai Chrysler*, 167 P.3d at 1250.

Loss of use damages for destroyed property may not be awarded if the owner is awarded prejudgment interest on damages for the value of the destroyed property. *Alaska Construction Equip.,* 128 P.3d at 170; *State v. Stanley*, 506 P.2d 1284, 1295 (Alaska 1973).

A loss of use award is not limited to the fair market value of the property. *Ben Lomond*, 691 P.2d at 1047. However, an award for loss of use may not be disproportionate to the property’s value. *Id*.; *Kenai Chrysler*, 167 P.3d at 1257-60.