**27.07 COMPENSATION FOR TAKING AN EASEMENT**

[Government entity] has taken an easement on land owned by [property owner]. The term "easement" means a right to use the land of another for specific purposes. After an easement has been taken, the property owner has the right to use the land covered by the easement for any purpose that does not conflict with the easement.

[Property owner] is entitled to payment of just compensation for a loss in property value caused by [government entity]’s taking of an easement on [short description of the property--e.g., “Lot 12”]. To determine just compensation, you must first determine the fair market value of [the property] before [government entity] took the easement. Then you must determine the fair market value of [the property] after [government entity] took the easement. If the fair market value of [the property] after [government entity] took the easement is less than the fair market value of [the property] before [government entity] took the easement, [property owner] is entitled to payment of the difference. If the fair market value of [the property] after [government entity] took the easement is unchanged, or the fair market value has increased, you must award [property owner] $1 as compensation for taking the easement.

**Use Note**

This instruction is intended for the situation where the government imposes an easement on property. This instruction should be given with Instruction 27.01 (Legal Right to Take) and Instruction 27.02 (Fair Market Value), adapted as necessary.

If there is a dispute over the scope of the easement or the uses remaining to the property owner after the taking, the court should give an additional instruction interpreting the intent of the easement.

**Comment**

Easements may be taken for public use. AS 09.55.250(2). The owner is entitled to the loss in fair market value of the property caused by the taking of an easement. *See City of Anchorage v. Nesbett,* 530 P.2d 1324, 1332-34 (Alaska 1975). *See also* 4 Nichols on Eminent Domain § 12D.01[2][c].

This instruction is drafted for the situation where the government imposes an easement on the property owner’s land. A taking also occurs when the government takes an easement that serves a dominant estate. The damages are measured by the reduction in value of the dominant estate from the loss of the easement. *Id*. § 12D[2][a]; *see also City of Kenai v. Burnett*, 860 P.2d 1233, 1241 & n.16 (Alaska 1993). This instruction can be modified to deal with that situation.

If the owner is unable to show loss of fair market value from taking the easement, the owner is entitled to nominal damages for the taking. *Scavenius v. City of Anchorage*, 539 P.2d 1161, 1165 (Alaska 1975) (dicta).