

Residential Homeowner Can Recover Costs of Repairs Even If Greater Than Fair Market Value of House

Article By:

Real Estate Steptoe Johnson

Until recently, owners of damaged homes in West Virginia had some limits on the amount of damages they could recover in a lawsuit. Now, the West Virginia Supreme Court of Appeals has significantly revised prior case law and expanded available damages in [*Brooks et al v. City of Huntington*](#) (No. 13-1083), issued on November 13, 2014. In *Brooks*, residential homeowner sued the City of Huntington for property damage and the jury awarded repair costs and damages for diminished value of the home. The Circuit Court reduced the jury verdict to allow for only the lesser of the repair costs or diminished value of the home. On appeal, the West Virginia Supreme Court of Appeals reversed the Circuit Court for reducing the damage award and issued the following new rules for measure of damages for property damage to residential property.

Cost of Repair Damages

The Court claimed it was issuing a “bright line” rule for damages, holding:

"When residential real property is damaged, the owner may recover the reasonable cost of repairing it even if the costs exceed its fair market value before the damage. The owner may also recover the related expenses stemming from injury, annoyance, inconvenience, and aggravation, and loss of use during the repair period. If the damage cannot be repaired, then the owner may recover the fair market value of the property before it was damaged, plus the related expenses stemming from the injury, annoyance, convenience, and aggravation, and loss of use during the time he has been deprived of his property. To the extent that Syllabus Point 2 of *Jarrett v. E. L. Harper & Sons, Inc.*, 160 W. Va. 399, 235 S.E.2d 362 (1977) states otherwise, it is hereby modified." *Syllabus Point 4*.

Nevertheless, the Supreme Court recognized the danger in this approach and also held that this damage award will be subject to review for reasonableness and excessiveness, to ensure "reasonable limitations." The Court held the following:

"To the extent that damages for cost of repair to residential real property exceed the fair market value of the property before it was damaged, damages awarded for cost of repair must be reasonable in relation to its fair market value before it was damaged. The measure of reasonable cost of repair damages is an issue for the trier of fact, but may be found to be unreasonable as a matter of law if unreasonably disproportionate to the fair market value of

the property prior to the damage." *Syllabus Point 5.*

Residual Diminution in Value

The Court issued a new a rule on how damages may be awarded for diminished value of the home:

"[W]here the owner of residential real property which is damaged can establish that the pre-damage fair market value of the residential real property cannot be fully restored by repairs and that a permanent, appreciable residual diminution in value will exist even after such repairs are made, then the owner may recover both the cost of repair and for such remaining diminution in value." *Syllabus Point 6.*

However, the trial court is to assess this new element "with guarded scrutiny" before submitting it to the jury because it is only the "extraordinary case" that will fit this profile.

Although it may be the rare case where repair costs exceed the fair market value of the home, these new measure of damages rules could result in the value of some cases being greater than before this new decision.

© Steptoe & Johnson PLLC. All Rights Reserved.

National Law Review, Volume IV, Number 325

Source URL: <https://natlawreview.com/article/residential-homeowner-can-recover-costs-repairs-even-if-greater-fair-market-value-ho>