

DEFENDANT'S PROPERTY DAMAGES (COUNTERCLAIM)--ISSUE AND BURDEN OF PROOF.¹

The (*state number*) issue reads:

"What amount is the defendant entitled to recover for property damages?"

If you have answered the (*state number*) issue "Yes" (and the (*state number*) issue "No") in favor of the defendant, the defendant is entitled to recover nominal damages even without proof of actual damages. Nominal damages consist of some trivial amount such as one dollar in recognition of the technical damages incurred by the defendant.

The defendant may also be entitled to recover actual damages. On this issue the burden of proof is on the defendant. This means that the defendant must prove, by the greater weight of the evidence, the amount of actual property damages proximately caused by the negligence of the plaintiff.²

¹This issue covers only actual damage to the property and not damages for loss of use. Where the evidence could justify recovery for loss of use, that should be submitted as a separate and additional issue. See, for example, N.C.P.I.--Civil 107.60.

²Care should be exercised in choosing the appropriate standard. Negligence cases require proximate cause. Intentional torts generally do not.

