

805.21 LITTERING—CIVIL ACTION FOR DAMAGES FOR FELONIOUS
LITTERING—DAMAGES ISSUE.

NOTE WELL: N.C. Gen. Stat. § 14-399(h) creates a cause of action for a person who sustains damage due to felonious littering.¹ This instruction should be used in conjunction with N.C.P.I.-Civil 805.20 "Littering-Civil Action for Damages for Felonious Littering."

This (*state number*) issue reads:

"What amount is the plaintiff entitled to recover?"²

If you have answered the (*state number*) issue "Yes" in favor of the plaintiff, the plaintiff is entitled to recover nominal damages even without proof of actual damages.³ Nominal damages consist of some trivial amount such as one dollar in recognition of the technical damage to the plaintiff's property.⁴

The plaintiff may also be entitled to recover actual damages.⁵ On this issue, the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, the amount of actual property damages proximately⁶ caused by the defendant's littering.

A proximate cause is a cause which in a natural and continuous sequence produces damage to property, and is a cause which a reasonable and prudent person in the same or similar circumstances could have foreseen would probably produce such damage or some similar damaging result. There may be more than one proximate cause of damage to property. The plaintiff is not required to prove that the defendant's littering was the sole proximate

cause of the damage. The plaintiff must prove by the greater weight of the evidence that the defendant's littering was a proximate cause.

The purpose of awarding actual damages is to restore the plaintiff's property to its condition prior to the damage proximately caused by the defendant.⁷ The monetary amount of actual damages is that sum which you find by the greater weight of the evidence to be the reasonable cost to the plaintiff of the expenses necessary to repair and restore the plaintiff's property. The amount of actual damages may include other reasonable amounts for incidental losses as well.⁸ The amount of actual damages is to be reasonably determined from the evidence presented. Although this does not require proof of that amount with mathematical precision,⁹ you may not make any award based upon speculation or conjecture.¹⁰

Finally, as to this (*state number*) issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence the monetary amount of actual property damages proximately caused by the defendant's littering, then you will answer this issue by writing that amount in the space provided.

On the other hand, if the plaintiff has failed to prove the monetary amount of actual property damages by the greater weight of the evidence, then you will answer this issue in the space provided by awarding the plaintiff some nominal amount such as one dollar in recognition of the technical damage to the plaintiff's property.

1. *ABC Servs., LLC v. Wheatly Boys, LLC*, ___ N.C. App. ___, 817 S.E.2d 397 (2018).

2. *NOTE WELL: N.C. Gen. Stat. § 14-399(h) provides for recovery of three times the amount of actual damages or \$200.00, whichever is greater. In addition, the plaintiff is entitled to court costs and attorney's fees. Id.*

3. *Bowen v. Fidelity Bank*, 209 N.C. 140, 144, 183 S.E. 266, 268 (1936); *Delta Env'tl. Consultants of N.C., Inc. v. Wysong & Miles Co.*, 132 N.C. App. 160, 171-72, 510 S.E.2d 690, 698, *disc. rev. denied*, 350 N.C. 379, 536 S.E.2d 70 (1999); *Cole v. Sorie*, 41 N.C. App. 485, 490, 255 S.E.2d 271, 274, *disc. rev. denied*, 298 N.C. 294, 259 S.E.2d 911 (1979).

4. N.C. Gen. Stat. § 14-399(h).

5. N.C. Gen. Stat. § 14-399(h) provides for the recovery of damages a "person sustains arising out of a violation." *See also Binder v. Gen. Motors Acceptance Corp.*, 222 N.C. 512, 514-15, 23 S.E.3d 894, 895 (1943), wherein the Supreme Court, quoting *Conrad v. Shuford*, 174 N.C. 719, 94 S.E. 424, 425 (1917), said:

A wrongdoer is liable for all damages which are the proximate effect of his wrong, and not for those which are remote; "that direct losses are necessarily proximate, and compensation, therefore, is always recoverable; that consequential losses are proximate when the natural and probable effect of the wrong."

6. Although not addressed again in the felony subsection of the statute, the misdemeanor subsection reflects an intent that the defendant "repair or restore property damaged by, or pay damages for any damage arising out of" littering. N.C. Gen. Stat. § 14-399(e2).

7. *See* N.C. Gen. Stat. § 14-399(e2) and note 7, *supra*; *Whiteside Estates, Inc. v. Highlands Cove, L.L.C.*, 146 N.C. App. 449, 462, 553 S.E.2d 431, 440 (2001) ("Whiteside I") (supporting the proposition that incidental losses might include recovery of plaintiff's reasonable costs incurred to prevent future injury from the littering or abate its harmful effects). For an instruction on incidental damages, see N.C.P.I.-Civil 503.70.

8. *See Whiteside Estates, Inc. v. Highlands Cove, L.L.C.*, 146 N.C. App. at 462, 553 S.E.2d at 440.

9. *See State Properties v. Ray*, 155 N.C. App. 65, 76-77, 574 S.E.2d 180, 188 (2002).

