

# Diminution In-Value Laws State-by-State Analysis (Property)



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**Alabama**

*Carson v. City of Prichard*, 709 So.2d 1199 (Ala. 1998)

*Fuller v. Fair*, 202 Ala. 430, 80 So. 814 (Ala. 1919)

The proper measure of damages for stigma is the difference between the market value of the land at the time immediately preceding the injury and the market value of the land in its immediate condition after the injury.



**Alaska**

*Jackovich Revocable Trust v. State Dep't of Transp.*, 54 P.3d 294 (Alaska 2002)

Use diminution in value in condemnation proceedings as an element to establish the amount owed.



**Arizona**

*Nucor Corp. v. Employers Ins. Co. of Wausau*, 231 Ariz. 411 (Ariz. App. 2012)

The Court held that the claim for stigma damages in this case were too attenuated to constitute damages as the policy imagined. However, the Court did not resolve whether actual damage was needed to trigger coverage for stigma damages.



**Arkansas**

No relevant information at this time.

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**California**

*Aas v. Superior Court*, 12 P.3d 1125 (Cal. 2000)

Found a difference between stigma damages and diminution in value. The Court noted California law allows recovery for diminution, but there are no reported decisions in California appearing to support stigma damages. The Court implied that the rejection of stigma damages in this case was due to lack of proof.



**Colorado**

*Bd. Of County Comm'rs v. Slovek*, 723 P.2d 1309 (Colo. App. 1990)

Suggests that Colorado may allow stigma damages if repair or diminution in value damages cannot make the Plaintiff whole.



**Connecticut**

*Willow Springs Condominium Ass'n, Inc. v. Seventh BRT Dev. Corp.*, 245 Conn. 1 (Conn. 1998)

Court has the discretion to select the repair measure, which substitutes for diminution in value caused by damage to property.



**Delaware**

No relevant information at this time.

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**District of Columbia**

*Wentworth v. Air Line Pilots Assoc.*, 336 A.2d 542 (D.C. 1975)

Recognized the concept that in a commercial property damage case, a policyholder can recover the diminution of value in lieu of repair costs.



**Florida**

*Orkin Exterminating Co. v. DelGuidice*, 790 So. 2d 1158 (Fla. 5th DCA 2001), review denied, 821 So. 2d 294 (Fla. 2002)

*Brisque Assoc. of Fla., Inc. v. Towers of Quayside No. 2 Condo. Assoc., Inc.*, 639 So.2d 997 (Fla. 3rd DCA 1994)(finding conflicts with *Orkin*)

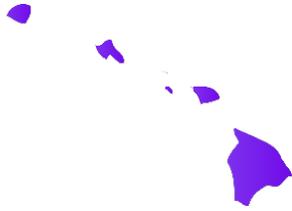
The Court wrote that diminution in value damages, or stigma damages not otherwise provided for in a contract, can be awarded on a breach of contract theory only under limited circumstances. Either diminution in value or cost to repair is awarded, depending on whether repair damages are adequate or diminution in value is less than repair costs. Plaintiff may have been able to recover stigma damages if he would have been able to show that repair was impracticable because it would have resulted in economic waste. However, Florida recognizes stigma damages as part of diminution in value.



**Georgia**

*Royal Capital v. Maryland Casualty Co.*, 291 Ga. 262 (Ga. 2012)

Diminished value can be recovered under a commercial property policy after real property has been damaged and repaired.



**Hawaii**

*County of Kauai v. Pacific Standard Life Ins. Co.*, 653 P.2d 766 (Haw. 1982)

*Clog Holdings, N.V. v. Bailey*, 992 P.2d 69 (Haw. 2000), Opinion Ordered Depublished (April 20, 2000).

Hawaii courts have used diminution in value to establish value for the purposes of condemnation, along with using diminution as the method of establishing values for loss to real property.



**Idaho**

*Boel v. Stewart Title Guaranty Co.*, 43 P.3d 768 (Idaho 2002)

Idaho courts have addressed diminution by speaking to the requirement, in a suit against a title company, to show some diminution in value of the real property.



**Illinois**

No relevant information at this time.

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**Indiana**

*Pflanz v. Foster*, 888 N.E.2d 756 (Ind. 2008)

Indiana law permits recovery of stigma damages for losses in the fair market value of property after remediation of environmental contamination. Stigma damages are not recoverable until remediation has been substantially completed, as that is when the value lost can be fully determined.



**Iowa**

No relevant information at this time.

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**Kansas**

*Smith v. Kansas Gas Serv. Co.*, 169 P.3d 1052 (Kan. 2007)

The property owner has not proven either a physical injury to the property or physical interference with the owner's use and enjoyment, stigma or market fear damages under a negligence or nuisance theory cannot be recovered.



**Kentucky**

*Davis v. Fischer Single Family Homes, Ltd.*, 231 S.W.3d 767 (Ky. Ct. App. 2007)

Kentucky law does not allow for recovery for damages to the reputation of real estate.



**Louisiana**

*Tudor Chateau Creole Apartments Partnership v. D.A. Exterminating Co., Inc.*, 691 So.2d 1259 (La. App. 1st Cir. 1997)

Awarded both costs of repairs, as estimated, and diminution in the value of the policy, as it placed the victim closer to the position held prior to the damage. Acknowledged that it was plausible that *Chateau Creole* had suffered a "stigma" to the property arising from the unknown character of the total structural damage to the property which must, by Louisiana law, be passed on to any purchaser.



**Maine**

*Marchesseault v. Jackson*, 611 A.2d 95 (Me. 1992)

Allowed an award for stigma damages after repairs in a construction defect case. In this case the home's value was not the same as it would have been if built properly. Thus, recovery was allowable for the home's lower market value.



**Maryland**

*Reichs Ford Road Joint Venture v. State Roads Comm'n of the State Hwy. Admin.*, 880 A.2d 307 (Md. 2005)

Maryland has recognized diminution in value in condemnation cases.



**Massachusetts**

*Lewis v. General Elec. Co.*, 254 F.Supp.2d 205 (D.C. Mass. 2003)

Allowed recovery of stigma damages for being in proximity to contamination.



**Michigan**

*Adkins v. Thomas Solvent Co.*, 487 N.W.2d 715 (Mich. 1992)

Relying on the economic loss doctrine, the Michigan Supreme Court held that diminution in property value based on alleged third party fears in relation to neighboring contamination does not meet the requirements for a private nuisance.



**Minnesota**

*Dealers Mfg., Co. v. County of Anoka*, 615 N.W.2d 76 (Minn. 2000)

Stigma damages are an appropriate consideration in determining the market value of contaminated properties. Further, the Court observed stigma can attach to the property whether contaminants are present, are threatened, or are totally absent.



**Mississippi**

*Harrison v. McMillan*, 828 So. 2d 756 (Miss. 2002)

Allowable if repairs do not restore the property to its reasonable market value before the harm, the Plaintiff is entitled to recover repair costs and the difference between the reasonable market value of the property without the damage and the reasonable market value after all the repairs were made.



**Missouri**

No relevant information at this time.

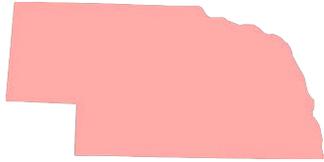
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**Montana**

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**Nebraska**

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**Nevada**

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**New Hampshire**

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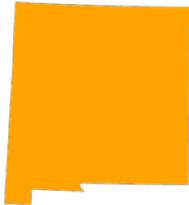
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**New Jersey**

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**New Mexico**

*Santa Fe v. Komis*, 845 P.2d 753 (N.M. 1992)

There must be evidence that the market is fearful of the proffered safety hazards, and that the market values property less because of it.



**New York**

*Farrell v. Lane Residential, Inc.*, 13 Misc.3d 1239(A), 831 N.Y.S.2d 353 (Sup 2006)

Market stigma damages are only recoverable if a Plaintiff can demonstrate that repairing the damage will not restore the property to its original market value.

*Fisher v. Qualico Contracting Corp.*, 98 N.Y.2d 534, 779 N.E.2d 178 (N.Y. 2002).

Plaintiff may recover the lesser of the diminution in value to the property's market value, or the reasonable cost of repairs necessary to restore the injured property to its pre-accident condition.



**North Carolina**

*BSK Enterprises, Inc. v. Beroth Oil Co.*, 783 S.E.2d 236 (NC 2016)

“Where no personal use exception applies, and the cost of remediation to property is disproportionate to or greatly exceeds the diminution in value of the property or is otherwise unreasonable under the circumstances, the cost awarded should be the diminution in value of the property.”



**North Dakota**

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**Ohio**

*Chance v. BP Chemicals Inc.*, 670 N.E.2d 985 (Ohio 1996)

Absent a showing of “actual harm,” Ohio does not recognize as compensable pure environmental stigma, defined as when the value of real property decreases due solely to public perception or fear of contamination from a neighboring property.



**Oklahoma**

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**Oregon**

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**Pennsylvania**

*Lobozzo v. Adam Eidemiller, Inc.*, 263 A.2d 432 (Pa. 1970); *Munoz v. Allstate Ins. Co.*, No. 9906-2855 (Pa. Comm. Pl. 1999)

In re Paoli R.R. Yard PCB Litig., 35 F.3d 717 (3d Cir. 1994)(applying Pennsylvania law)

The Court held that it was unaware of any circumstances where an insurance company reimbursed the insured for diminished value of realty and the Plaintiff may only recover the cost of repair or restoration.

The Court in *Paoli* recognized a claim for diminished value and held that where repairs do not fully compensate the Plaintiffs, they should be compensated for any remaining loss. Additionally, permanent physical damage is not required if: 1) Defendants have caused physical damage to Plaintiff's property; 2) Plaintiffs have demonstrated that repair of this damage will not restore the value of the property; and 3) Plaintiffs have shown that there is ongoing risk to their land.



**Rhode Island**

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**South Carolina**

*State Auto Property and Casualty Ins. Co. v. Howard*, 2013 U.S. Dist. LEXIS 8240 (D.S.C. Jan. 22, 2013)(applying SC law)

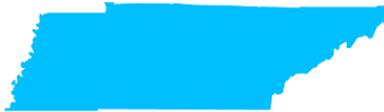
Diminished value of property did not constitute property damage under the policy, which meant physical injury.



**South Dakota**

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**Tennessee**

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**Texas**

*Country Village Homes, Inc. v. Patterson*, 236 S.W.3d 413 (Tex. App. 1st Dist. 2007), petition for review filed, (Oct. 4, 2007)

Permits stigma damages for construction defects. The Court upheld the jury's finding of stigma damages after they relied on the Plaintiff's appraiser's theory that it was possible to estimate the reduction in market value of a home due to the reluctance of buyers to purchase a home that had undergone extensive repairs.



**Utah**

*Walker Drug Co., Inc. v. LaSal Oil Co.*, 972 P.2d 1238 (Uth 1998)

Recognized that stigma damages are a facet of permanent damages, and recovery for stigma damages is intended to compensate for loss to the property's market value resulting from the long-term negative perception of the property in excess of any recovery obtained for the temporary injury itself.



**Vermont**

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**Virginia**

*Adams v. Star Enter.*, 51 F.3d 417 (4th Cir. 1995)(applying Virginia law)

Stigma damages recoverable only if the contamination has actually spread to the Plaintiff's property.



**Washington**

*Mayer v. Sto Industries, Inc.*, 156 Wn. 2d 677, 132 P.3d 115 (Wash. 2006)

Where the damage to real property is permanent, a Plaintiff is entitled to recover not only the costs of restoration or repair, but also for the property's diminished value.



**West Virginia**

*Brooks v. City of Huntington*, 234 W. Va 607, 768 S.E2d 97 (WV 2014)

Homeowners could recover damages for both repair costs and residual diminution in value damages for flooding caused by the city's negligence.



**Wisconsin**

*Jacob v. West Bend Mut. Ins. Co.*, 203 Wis. 2d 524, 553 N.W.2d 800 (Wis. Ct. App. 1996)

The Court recognized that repaired property in a construction defect claim may still suffer a diminution in value, thus a Plaintiff may recover both diminution in value and repair costs.



**Wyoming**

*Miller v. Campbell County*, 901 P.2d 1107 (Wyo. 1995)

In a construction defect case, the Wyoming Supreme Court held that diminution in value was an element of damage in an inverse condemnation case.