

1 **13-811. Acceptance; when silence is acceptance.**

2 The silence or inaction of _____ (*name of offeree*) constitutes acceptance only
3 if:

4 [_____ (*name of offeree*) accepted the benefit[s] of the offer, after a reasonable
5 opportunity to reject the benefit[s], knowing that _____ (*name of offeror*) expected
6 compensation in return];

7 [or]

8 [_____ (*name of offeror*) stated or gave _____ (*name of offeree*)
9 reason to understand that the offer could be accepted through silence or inaction and
10 _____ (*name of offeree*) intended to accept the offer through silence or inaction];

11 [or]

12 [Where because of past dealings between the parties, it is reasonable that _____
13 (*name of offeree*) should have notified _____ (*name of offeror*) that ~~[[he] [she]~~
14 ~~[it]~~ _____ (*name of offeree*) did not intend to accept the offer].

15 USE NOTES

16 When a case presents a jury question as to whether a party's silence or inaction constituted
17 acceptance of an offer, this instruction should be given. The bracketed language should be inserted
18 to the extent warranted by the evidence in a case.

19 [Adopted, effective November 1, 1991; as amended by Supreme Court Order No. 20-8300-006,
20 effective for all cases pending or filed on or after December 31, 2020; as amended by Supreme
21 Court Order No. S-1-RCR-2025-00126, effective for all cases pending or filed on or after
22 December 31, 2025.]

1 **Committee commentary.** — Ordinarily, silence or inaction does not constitute acceptance of an
2 offer. However, in the circumstances addressed by the instruction, silence or inaction may be found
3 to constitute acceptance. The circumstances are ones which give rise to a duty on the part of the
4 offeree to speak if the offeree does not intend to accept the offer. *See Garcia v. Middle Rio Grande*
5 *Conservancy Dist.*, 1983-NMCA-047, ¶ 22, 99 N.M. 802, 664 P.2d 1000 (“Silence is acceptance
6 . . . only when there is a duty to speak.”); see generally Restatement (Second) of Contracts § 69
7 (1981) (discussing the circumstances and identifying potential limitations on their applicability).
8 [As amended by Supreme Court Order No. 20-8300-006, effective for all cases pending or filed
9 on or after December 31, 2020.]