

1 **13-815. Promissory estoppel; definition.**

2 _____ (*name of the plaintiff*) [also] seeks damages based upon a
3 claim of promissory estoppel. To establish this claim, _____ (*name of the*
4 *plaintiff*) must prove all of the following:

5 1. that _____ (*name of the defendant*) made a promise to
6 _____ (*name of the plaintiff*);

7 2. that _____ (*name of the plaintiff*) relied on the promise and it was
8 reasonable for ~~[[him] [her]]~~ _____ (*name of the plaintiff*) to do so;

9 3. that the promise caused _____ (*name of the plaintiff*) to change
10 ~~[[his or her]]~~ _____ (*name of plaintiff's*) position by _____ (*insert*
11 *action or forbearance of the plaintiff*);

12 4. that the change in position was substantial;

13 5. that _____ (*name of the defendant*) knew or should have
14 known that _____ (*name of the plaintiff*) would _____
15 (*insert action or forbearance*) after _____ (*name of the defendant*) made the
16 promise.

17 [Adopted, effective November 1, 1991; as amended by Supreme Court Order No. 12-8300-033,
18 effective for all cases filed or pending on or after January 7, 2013; as amended by Supreme Court
19 Order No. S-1-RCR-2025-00126, effective for all cases pending or filed on or after December 31,
20 2025.]

21 **Committee commentary.** — This instruction was amended in 2011 to be consistent with New
22 Mexico case law. *See Strata Prod. Co. v. Mercury* [~~Exploration~~ *Expl. Co.*, 1996-NMSC-016, ¶ 20,
23 121 N.M. 622, ~~[-628,]~~ 916 P.2d 822~~[-828 (1996)]~~ (listing the elements of promissory estoppel as

1 “(1) An actual promise must have been made which in fact induced the promisee’s action or
2 forbearance; (2) The promisee’s reliance on the promise must have been reasonable; (3) The
3 promisee’s action or forbearance must have amounted to a substantial change in position; (4) The
4 promisee’s action or forbearance must have actually been foreseen or reasonably foreseeable to
5 the promisor when making the promise; and (5) enforcement of the promise is required to prevent
6 injustice”); *Magnolia Mountain Ltd. P’ship v. Ski Rio Partners*, 2006-NMCA-027, ¶ 25, 139 N.M.
7 288, 131 P.3d 675. The last element of the cause of action was omitted from the jury instruction
8 because it is a question for the court. Even where a promise is not supported by traditional
9 consideration, it may be enforceable against the promisor under the doctrine of [“]“promissory
10 estoppel.[”]” *See, e.g., Eavenson v. Lewis Means, Inc.*, 1986-NMSC-097, ¶ 6, 105 N.M. 161, 730
11 P.2d 464[~~(1986)~~]; Restatement (Second) of Contracts § 90 (1981). The New Mexico courts in
12 adopting promissory estoppel have commented favorably on the Restatement version of the
13 doctrine. *See id.*[~~*Eavenson, supra.*~~] [“]“Promissory estoppel,[”]” as a theory, should be
14 distinguished from the doctrine of [“]“equitable estoppel.[”]” The latter doctrine may also be
15 appropriate in a contracts situation. *See, e.g., Capo v. Century [Insurance]Ins. Co.*, 1980-NMSC-
16 058, ¶ 21, 94 N.M. 373, 610 P.2d 1202[~~(1980)~~].

17 Where the promise is enforced under promissory estoppel, the court may limit damages or the
18 remedy, [“]“as justice requires.[”]” Restatement (Second) of Contracts § 90(1). Usually, damages
19 under a [“]“promissory estoppel[”]” theory are limited to [“]“reliance damages.[”]” *See* J. A.
20 Farnsworth, *Contracts* § 2.19 (1982). Some of the factors which may be considered in determining
21 the extent to which the remedy should be limited or expanded are referred to in comment b to
22 Restatement (Second) of Contracts § 90. Where the claim of promissory estoppel arises in the

1 context of a charitable pledge, there is no need for any reliance on the part of the promisee in order
2 to make the promise enforceable. *See* Restatement (Second) of Contracts § 90(2).
3 Where an oral promise is sought to be enforced under promissory estoppel, the statute of frauds is
4 not a defense. *See Eavenson*, 1986-NMSC-097 [*supra*]; Restatement (Second) of Contracts § 139;
5 J. A. Farnsworth, *Contracts* § 6.12 (1982).
6 [As amended by Supreme Court Order No. 12-8300-033[, ~~effective for all cases filed or pending~~
7 ~~on or after January 7, 2013~~]; as amended by Supreme Court Order No. S-1-RCR-2025-00126.]