

1 **13-823. Breach of contract; failure to perform.**

2 _____ (*name of party asserting material breach*) contends that there
3 has been a material breach of the contract. A material breach occurs when a party fails to do
4 something that is so important to the contract that the failure to perform that obligation defeats an
5 essential purpose of the parties in making the agreement.

6 _____ (*name of party asserting material breach*) has the burden of
7 proving that _____ (*name of opposing party*) committed a material breach.

8 Material breach by one party excuses the other party from performing its obligations under
9 the contract.

10 USE NOTES

11 This instruction should be used in cases where a party seeks to be released from its
12 contractual obligations because the other party committed a prior material breach of the contract.
13 In such cases, the question whether a breach was “material” is ordinarily an issue of fact to be
14 submitted to the jury.

15 [Adopted, effective November 1, 1991; as amended by Supreme Court Order No. 14-8300-006,
16 effective for all cases filed or pending on or after December 31, 2014.]

17 **Committee commentary.** — “[N]ot every breach of a contract or failure exactly to perform—
18 certainly not every partial failure to perform—” gives the other party the right to be released from
19 its remaining obligations under a contract. *Samples v. Robinson*, 1954-NMSC-091, ¶ 14, 58 N.M.
20 701, 275 P.2d 185 (citation and quotation omitted). Rather, the breach “must go to the root of the
21 contract” or must involve “matters which would render the performance of the remainder a thing
22 different in substance from that which was contracted for.” *Id.* The Restatement (Second) of
23 Contracts “provides a useful framework for analyzing whether a breach of contract is material.”

1 *Famiglietta v. Ivie-Miller Enters., Inc.*, 1998-NMCA-155, ¶ 18, 126 N.M. 69, 966 P.2d 777.

2 Restatement (Second) of Contracts § 241, entitled “Circumstances Significant in Determining
3 Whether a Failure is Material,” lists the following five factors:

4 (a) the extent to which the injured party will be deprived of the benefit which ~~he~~they
5 reasonably expected;

6 (b) the extent to which the injured party can be adequately compensated for the part of
7 that benefit of which ~~he~~they will be deprived;

8 (c) the extent to which the party failing to perform or to offer to perform will suffer
9 forfeiture;

10 (d) the likelihood that the party failing to perform or to offer to perform will cure
11 ~~his~~their failure, taking account of all the circumstances including any reasonable assurances;

12 (e) the extent to which the behavior of the party failing to perform or to offer to perform
13 comports with standards of good faith and fair dealing.

14 Although a non-material breach of contract does not release the other party from its contractual
15 obligations, it may give rise to a claim for damages. *Samples*, 1954-NMSC-091, ¶ 14.

16 [As amended by Supreme Court Order No. 14-8300-006~~, effective for all cases filed or pending~~
17 ~~on or after December 31, 2014~~]; as amended by Supreme Court Order No. S-1-RCR-2025-00126.]