

1 **13-824. Breach of contract; repudiation of contractual obligation.**

2 It is a breach of contract if, before performance became due, \_\_\_\_\_  
3 (*promisor*) announced or otherwise demonstrated ~~[[his] [her] [its]]~~ \_\_\_\_\_'s  
4 (*promisor's*) intention not to perform a contractual obligation [where \_\_\_\_\_  
5 (*promisee*) had not fully carried out ~~[[his] [her] [its]]~~ \_\_\_\_\_'s (*promisee's*) contractual  
6 obligations].

7 USE NOTES

8 The bracketed part of the instruction should be given only when the evidence and claims  
9 of the parties raise the issue. The blanks should be filled in with the names of the parties.  
10 [Adopted, effective November 1, 1991; as amended by Supreme Court Order No. 18-8300-013,  
11 effective for all cases pending or filed on or after December 31, 2018; as amended by Supreme  
12 Court Order No. S-1-RCR-2025-00126, effective for all cases pending or filed on or after  
13 December 31, 2025.]

14 **Committee commentary.** — Where the time has not yet arrived for contract performance, the  
15 contract performer may still breach by announcing ahead of time that ~~[he or she]~~ they will not  
16 perform the contract obligation. Such an announcement is typically called a ~~[""repudiation[""]~~ or  
17 ~~[""anticipatory repudiation[""]~~ or ~~[""renunciation. [""]~~ Any such repudiation must be clear and  
18 unequivocal. *See Viramontes v. Fox*, 1959-NMSC-020, ¶ 20, 65 N.M. 275, 335 P.2d 1071.  
19 Expressions of doubt or concern about performance are insufficient to constitute a repudiation. J.  
20 A. Farnsworth, *Contracts* § 8.21. The repudiation need not be explicit. It may be signified by either  
21 words or conduct. *Id.* For example, where a contract performer intentionally destroys or abandons  
22 the only means available to ~~[him or her]~~ them for performance, such action may constitute a

1 repudiation. The repudiation must relate to a material duty rather than to an insignificant one. *See*  
2 Restatement (Second) of Contracts § 250 (1981).

3 The repudiation is not automatically a breach, but it may be treated as such at the election of the  
4 promisee. *See* J.A. Farnsworth, Contracts § 8.21. In order to treat a repudiation as a breach, the  
5 other party must so signify in some reasonable way, thus constituting an ["]"acceptance["]" of the  
6 repudiation. *See Ostic v. Mackmiller*, 1949-NMSC-042, ¶ 18, 53 N.M. 319, 207 P.2d 1008. Until  
7 there has been such an ["]"acceptance["]" of the repudiation, the contract performer may retract  
8 the repudiation. An anticipatory repudiation also may suspend or discharge the promise["]'s  
9 obligation to perform [~~his or her~~their] duties. *See U.S. Potash Co. v. McNutt*, 70 F.2d 126, 130  
10 (10th Cir. 1934).

11 The announcement of prospective nonperformance will not constitute a breach of contract where  
12 the repudiating party has received [~~his or her~~their] full exchange prior to repudiation.

13 [As amended by Supreme Court Order No. 18-8300-013[~~, effective for all cases pending or filed~~  
14 ~~on or after December 31, 2018~~]; as amended by Supreme Court Order No. S-1-RCR-2025-00126.]