

1 **13-834. Misrepresentation.**

2 _____ (*name of defendant*) claims that the contract upon which
3 _____ (*name of plaintiff*) relies is void because of misrepresentation by
4 _____ (*name of plaintiff*).

5 To establish the defense of misrepresentation, _____ (*name of defendant*) must
6 prove all of the following:

- 7 1. That _____ (*name of plaintiff*) made a misrepresentation;
- 8 2. That the misrepresentation was [fraudulent] [or] [material];
- 9 3. That _____ (*name of defendant*) would not have entered into the
10 contract if ~~[[he][she][it]]~~ _____ (*name of defendant*) had known that the representation
11 was untrue; and
- 12 4. That _____ (*name of defendant*)'s reliance on the misrepresentation was
13 justified.

14 [A material misrepresentation is any untrue statement upon which the other party did in
15 fact rely in entering into the contract, and without which the other party would not have entered
16 into the agreement.]

17 [A misrepresentation is fraudulent if one party makes it with the intent to deceive and to
18 cause the other party to act on it. If a fraudulent misrepresentation is at issue, it must be proven by
19 clear and convincing evidence.]

20 USE NOTES

21 Use this instruction when the defendant contends that a contract is void because of a
22 misrepresentation by the plaintiff. Include the first bracketed paragraph when a material
23 misrepresentation is alleged. Include the second bracketed paragraph when a fraudulent

1 misrepresentation is alleged. If the defendant contends that the misrepresentation was fraudulent,
2 the jury should also be instructed that a fraudulent misrepresentation must be proven by clear and
3 convincing evidence. *See* UJI 13-405 NMRA.

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

7 **Committee commentary.** — Misrepresentations by one party as to a writing can make a contract
8 voidable by the other party. *See, e.g., Gross Kelly & Co. v. Bibo*, 1914-NMSC-085, ¶¶ 17, 35, 19
9 N.M. 495, 145 P. 480. “In order for this to occur, the recipient of the misrepresentation must show
10 that (1) there was a misrepresentation that was (2) material or fraudulent and which (3) induced
11 the recipient to enter into the agreement, and that (4) the recipient's reliance on the
12 misrepresentation was justified.” *Sisneros v. Citadel [Broadcasting]Broad. Co.*, 2006-NMCA-
13 102, ¶ 10, 140 N.M. 266, 142 P.3d 34.

14 The contractual defense does not require fraud, or that the misrepresentations be intentional. “The
15 rule in New Mexico is that irrespective of the good faith with which a misrepresentation of material
16 fact is made, if it is justifiably relied on by one seeking rescission of the contract, such rescission
17 should be allowed.” *Jones v. Friedman*, 1953-NMSC-051, ¶ 22, 57 N.M. 361, 258[+] P.2d 1131;
18 *see also Maxey v. Quintana*, 1972-NMCA-069, ¶ 9, 84 N.M. 38, 499 P.2d 356 (“Rescission may
19 be effected without regard to the good faith with which a misrepresentation is made.”). However,
20 when the misrepresentation is not material, fraudulent intent must be shown. *See Sisneros*, 2006-
21 NMCA-102, ¶ 10; *cf. McElhannon v. Ford*, 2003-NMCA-091, ¶ 15, 134 N.M. 124, 73 P.3d 827
22 (“[R]escission may be allowed in certain cases of non-fraudulent, but material, nondisclosure.”).

1 The burden of proof is different depending on whether fraud or misrepresentation is at issue. Where
2 the misrepresentations are fraudulent, the defendant must prove the defense under the higher clear
3 and convincing standard. *See, e.g., McLean v. Paddock*, 1967-NMSC-165, ¶ 16, 78 N.M. 234, 430
4 P.2d 392 (requiring the defense of fraud to be proven by clear and convincing evidence), *overruled*
5 *on other grounds by Duke City Lumber Co., Inc. v. Terrel*, 1975-NMSC-041, ¶ 7, 88 N.M. 299,
6 540 P.2d 229.

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8 ~~or after December 31, 2020~~]; as amended by Supreme Court Order No. S-1-RCR-2025-00126.]