

1 **13-836. Accord and satisfaction.**

2 _____ (*obligor*) is excused from further performance of ~~[[his]–[her]]~~
3 _____’s (*obligor’s*) obligations under the contract if _____
4 (*obligor*) (*third party*) has [offered] [performed] and _____ (*obligee*) has accepted
5 _____ in full satisfaction of _____ (*obligor*–[’]’s) obligations under
6 the contract.

7 USE NOTES

8 This instruction is applicable to the defense traditionally labeled [“]“accord and
9 satisfaction,[“]” as well as to other defenses which go beyond strict accord and satisfaction, such
10 as [“]“novation,[“]” [“]“substituted contract,[“]” or [“]“executory accord.[“]” When applicable, this
11 defense may require use of UJI 13-805 through 13-813 NMRA (offer and acceptance).

12 [Adopted, effective November 1, 1991; as amended by Supreme Court Order No. S-1-RCR-2025-
13 00126, effective for all cases pending or filed on or after December 31, 2025.]

14 **Committee commentary.** — A party to a contract may agree to accept something different in
15 satisfaction of the other party[’]’s contractual obligations. When this occurs, the other party to the
16 contract is discharged from ~~[[his or her]]~~their original contractual obligation. [*National*]*Nat’l Old*
17 *Line [Insurance]**Ins. Co. v. Brown*, 1988-NMSC-071, ¶ 10, 107 N.M. 482, 760 P.2d 775[–(1988)].

18 This type of discharge or relief from contractual duty may take different forms and be subject to
19 different characterizations such as [“]“substituted contract,[“]” [“]“novation,[“]” [“]“accord and
20 satisfaction[“]” or [“]“executory accord[“]”. See J. A. Farnsworth, *Contracts* § 4.24 (1982). It is the
21 substance of the transaction and not its characterization which is important, however, and for
22 purposes of convenience the term [“]“accord and satisfaction[“]” will be employed throughout to
23 apply to all transactions where discharge of a contract duty occurs through acceptance of

1 something in substitution. Discharge by means of this defense, however, occurs only when what
2 is accepted in satisfaction of the contract obligation in fact occurs.

3 For an accord and satisfaction to relieve a party[']s original obligations under a previous contract,
4 it must be shown that the obligee accepted the accord as full satisfaction for the debt or obligation
5 owed. *Albuquerque [Nat.]Nat'l Bank v. Albuquerque Ranch [Estates]Ests., Inc.*, 1982-NMSC-142
6 [182], ¶ 99 N.M. 95, 654 P.2d 548[(~~1982~~)]; *Sparks v. Melmar Corp.*, 1979-NMSC-064, ¶ 11, 93
7 N.M. 201, 598 P.2d 1161[(~~1979~~)]; *Smith Const. Co. v. Knights of Columbus, Council No. 1226*,
8 1974-NMSC-016, ¶ 8, 86 N.M. 50, 519 P.2d 286[(~~1974~~)]. Accord and satisfaction is an affirmative
9 defense which must be pleaded effectively or raised during the proceedings. *Gallup Gamerao Coal*
10 *Co. v. Irwin*, 1973-NMSC-110, ¶ 11, 85 N.M. 673, 515 P.2d 1277[(~~1973~~)].

11 The substituted performance need not be performed by the original contract obligor who is
12 discharged from the contractual duty. Thus, a contract obligor will be discharged from
13 performance if the obligee agrees to accept performance by a third party in substitution. *See*
14 *Restatement (Second) of Contracts*, § 278.

15 [As amended by Supreme Court Order No. S-1-RCR-2025-00126.]