

1 **13-811. Acceptance; when silence is acceptance.**

2 ~~[Silence is acceptance only under [one or more of] the following condition[s]:~~

3 ~~[If _____ took the benefits of an offer, knowing of _____'s~~
4 ~~intent to receive something in return;]~~

5 ~~[or]~~

6 ~~[If an offer gave _____ reason to understand that~~
7 ~~_____ would consider silence as an acceptance;]~~

8 ~~[or]~~

9 ~~[If the previous dealings of the parties reasonably indicate that an offer can be accepted by~~
10 ~~silence or inaction].]~~

11 The silence or inaction of _____ (*name of offeree*) constitutes acceptance only if:

12 [_____ (*name of offeree*) accepted the benefit[s] of the offer, after a reasonable
13 opportunity to reject the benefit[s], knowing that _____ (*name of offeror*) expected
14 compensation in return];

15 [or]

16 [_____ (*name of offeror*) stated or gave _____ (*name of offeree*) reason to
17 understand that the offer could be accepted through silence or inaction and _____ (*name of*
18 *offeree*) intended to accept the offer through silence or inaction];

19 [or]

20 [Where because of past dealings between the parties, it is reasonable that _____ (*name*
21 *of offeree*) should have notified _____ (*name of offeror*) that [he] [she] [it] did not intend
22 to accept the offer].

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USE NOTES

~~[Where silence is claimed to constitute an acceptance, this instruction should be given with UJI 13-807 and 13-816 NMRA. Use only the condition(s) listed above which may be applicable to the facts.]~~

When a case presents a jury question as to whether a party’s silence or inaction constituted acceptance of an offer, this instruction should be given. The bracketed language should be inserted to the extent warranted by the evidence in a case.

[Adopted, effective November 1, 1991; as amended by Supreme Court Order No. 20-8300-006, effective for all cases pending or filed on or after December 31, 2020.]

Committee commentary. — ~~[Silence or inaction may become an acceptance only when the circumstances would impose upon the offeree a duty to speak. *Garcia v. Middle Rio Grande Conservancy District*, 99 N.M. 802, 664 P.2d 1000 (Ct. App. 1983); *Vance v. Forty Eight Star Mill*, 54 N.M. 144, 215 P.2d 1016 (1949); Restatement (Second) of Contracts § 69.~~

~~The first condition described in this instruction is illustrated by *Acme Cigarette Services, Inc. v. Gallegos*, 91 N.M. 577, 577 P.2d 885 (Ct. App. 1978), in which a party accepted the benefits of an option contract and, after one year, attempted to break the contract and avoid his obligations, claiming that his silence had not constituted an acceptance. The construction of silence in the course of dealing between parties (the third condition above) is illustrated by *McCoy v. Alsup*, 94 N.M. 255, 609 P.2d 337 (Ct. App. 1980) (offerors' silence in response to offeree's letter confirming conditional acceptance constituted an admission and assent to the conditional acceptance).~~

1 ~~The conditions described in this instruction reflect those clearly recognized by the existing~~
2 ~~reported decisions. The question is one of reasonableness in the circumstances and the listed~~
3 ~~conditions are not intended to be exclusive. They may be supplemented in a particular case where~~
4 ~~appropriate.]~~

5 Ordinarily, silence or inaction does not constitute acceptance of an offer. However, in the
6 circumstances addressed by the instruction, silence or inaction may be found to constitute
7 acceptance. The circumstances are ones which give rise to a duty on the part of the offeree to speak
8 if the offeree does not intend to accept the offer. See *Garcia v. Middle Rio Grande Conservancy*
9 *Dist.*, 1983-NMCA-047, ¶ 22, 99 N.M. 802, 664 P.2d 1000 (“Silence is acceptance . . . only when
10 there is a duty to speak.”); see generally Restatement (Second) of Contracts § 69 (1981)
11 (discussing the circumstances and identifying potential limitations on their applicability).
12 [As amended by Supreme Court Order No. 20-8300-006, effective for all cases pending or filed
13 on or after December 31, 2020.]