

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

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

\_\_\_\_\_ (*name of party asserting material breach*) has the burden of proving that \_\_\_\_\_ (*name of opposing party*) committed a material breach.

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

**USE NOTE**

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

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