

**13-817. Modification of contract; definition.**

Modification of a contract occurs when the parties intend to continue the contractual relationship but wish to change one or more of the terms of the contract. In order for the modification to be effective, there must be mutual assent of the parties to the modification, [and \_\_\_\_\_ (*name of party to the contract*) must have:

[done something [he][she][it] was not already obligated to do]; or  
[promised to do something [he][she][it] was not already obligated to do]; or  
[not done something [he][she][it] otherwise could have done]; or  
[promised not to do something [he][she][it] otherwise could have done].]

[Even a contract that requires modifications to be in writing may be modified orally. However, the oral modification must be proven by clear and convincing evidence.]

**USE NOTES**

This instruction should be given when the validity of a contract modification is at issue. Use the first set of bracketed language when there is an issue as to whether a party benefitting from the modification gave consideration for it, including whichever of the four bracketed choices are supported by the evidence. Use the second set of bracketed language when an oral modification is alleged to have been made to a written contract with terms requiring that modifications be in writing. In such a case, the jury should also be instructed that an oral modification must be proven by clear and convincing evidence. *See* UJI 13-405 NMRA. [Adopted, effective November 1, 1991; as amended by Supreme Court Order No. 18-8300-013, effective for all cases pending or filed on or after December 31, 2018; as amended by Supreme Court Order No. 20-8300-006, effective for all cases pending or filed on or after December 31, 2020.]