**24.08F RATIFICATION BY AFFIRMANCE OR DELAY**

[Plaintiff] [defendant] claims that the [defendant] [plaintiff] lost the right to assert that the agreement is void and not enforceable because of [defendant's] [plaintiff's] conduct after learning of the [misrepresentation] [mistake].

[Defendant] [plaintiff] lost the right to assert that the agreement is void if you decide that both of the following things are more likely true than not true:

[(1) [Defendant] [plaintiff] knew of the [plaintiff's] [defendant's] misrepresentation; and]

[(1) [Defendant] [plaintiff] knew or had reason to know of [plaintiff's] [defendant's] misrepresentation [mistake]; and]

[(2) [Defendant] [plaintiff], by words or conduct, demonstrated to [plaintiff] [defendant] an intention to continue with the agreement.]

[(2) [Defendant] [plaintiff] did not demonstrate to the [plaintiff] [defendant] within a reasonable time an intention not to continue with the agreement.]

**Use Note**

The choice of which of the first alternative paragraphs to use depends on whether the misrepresentation was fraudulent or nonfraudulent. *See* Comment. Either one of the first alternative paragraphs can be used with either one of the second alternative paragraphs.

This instruction may be applicable in response to a claim seeking avoidance of a contract on grounds of mistake or misrepresentation. When a party to an agreement alleges that the other party lost the right to avoid the contract because of conduct or delay which amounts to a ratification, this instruction should be given after Instruction 24.08E.

# **Comment**

The Alaska Supreme Court has adopted the following formulation of the law of ratification:

[T]he power of a party to avoid a contract for mistake or misrepresentation is lost if, after he knows or has reason to know of the mistake or non‑fraudulent misrepresentation, or knows of the fraudulent misrepresentation, “he manifests to the other party his intention to affirm it or acts with respect to anything he has received in a manner inconsistent with disaffirmance,” or “he does not within a reasonable time manifest to the other party his intention to avoid it.”

*Thorstenson v. ARCO Alaska, Inc.*, 780 P.2d 371, 374 (Alaska 1989) (*quoting* Restatement (Second) of Contracts §§ 380(2), 381(2) (1981)); *see also Bering Straits Native Corp. v. Birklid*, 739 P.2d 767, 768 (Alaska 1987); *Krossa v. All Alaska Seafoods, Inc.*, 37 P.3d 411, 418 (Alaska 2001).