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Text Messages-A Binding Contract?



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TEXT MESSAGES COULD BE A BINDING CONTRACT



As more business communication is conducted via text messages, businesses need to be aware that they can have legal ramifications. In the eyes of the law, text messages may not be as informal as you think.

An issue is emerging regarding whether a text message can constitute a binding contract. Many states have no legislation or case law on the issue. However, most states have adopted the Uniform Electronic Transaction Act, which stipulates that electronic writing and signatures are the legal equivalent of physical writing. That potentially places text messages in the category of legally binding communication.

In California, the Statute of Frauds, which relates to real estate, expressly states that a text message is an electronic message that is ephemeral in nature and insufficient to create a contract.

In Massachusetts, however, the Land Court has held that text messages and emails can potentially satisfy the Statute of Frauds, giving rise to a binding and enforceable contract. In that case, the court evaluated whether text messages were mere negotiations or whether they constituted a binding contract. The exchange involved several drafts of a letter of intent.

In the pivotal exchange, the broker responded to a text message that contained the material terms of a contract and included his first name in the end of his response. The court concluded that inserting his name at the end of the message qualified as a binding signature.

Even where there are no regulations in place, business owners would be advised to assume that the Massachusetts interpretation could be applied in their own state. As many other states have adopted the Uniform Electronic Transaction Act, it's reasonable to assume those courts would interpret the law in the same way.

Though the Massachusetts case involves real estate, it provides some direction for other business negotiations, including sales and construction change orders.

One practical step to avoid confusion or conflict is to insert a provision into draft agreements stating that the agreement can only be executed via a physical signature and that a name in an email or text is insufficient.

Alternatively, you may want to avoid the use of text messages during negotiations or ensure you do not manually type your name below the message.



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do not manually type your name below the message.
To protect themselves, businesses should take steps to preserve relevant text messages, in the same way they preserve email documentation. A legal claim could survive or fail on the basis of text messaging documentation.

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