

Court Rules That Sending an Email Can Bind You, Even Without Signing It

The real estate industry runs on electronic signatures nowadays. In our market most contracts are created and signed on CTM eContracts. Buyers and sellers can click on "Select Font Signature" and see their name appear in a script font. Then they click "Save" and click "Accept" to show that they accept that the font signature is theirs. That document is considered signed.

In the beginning, I was leery of this technology, insisting that our clients use a stylus or finger to personally sign their name on a touch screen device such as a smartphone. Ultimately I relented, realizing that the closing based on those electronically signed documents does involve a "wet signature" witnessed by a Notary.

Electronic signatures became legal as a result of UETA, the Uniform Electronic Transactions Act, which became law in 1999. It was followed in 2000 by the E-Sign Act, which legalized electronic signatures for interstate and international transactions. The following is from www.BakerMckenzie.com:

UETA provides a framework for states to enact state law concerning the enforceability of e-signatures and the validity of electronic records. Forty-seven states and the District of Columbia, Puerto Rico and the US Virgin Islands have adopted some form of UETA. The only states that have not adopted UETA are New York, Illinois and Washington, but each of these states has enacted legislation similar to UETA to govern how electronic transactions are handled....

UETA and the E-Sign Act pro-

REAL ESTATE TODAY



By **JIM SMITH, Realtor®**

vide that: (a) a record or signature may not be denied legal effect or enforceability solely because it is in electronic form; (b) a contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation; (c) if a law requires a record to be in writing, an electronic record satisfies the law; and (d) if a law requires a signature, an electronic signature satisfies the law.

It followed, as a result of this law, that electronic messages (emails) between two parties can constitute a contract if both parties have signed their emails by typing their names. The more detailed the emails (covering terms as well as price) the more likely that a court would deem them enforceable contracts.

A Sept. 28 article on Forbes.com by Joshua Stein carried the headline, **Yes, Sending an Email Can Create a Binding Contract**. It reported on an appellate court decision in New York State that went further to declare that typing your name on such emails was not necessary, that merely clicking "send" from your email account made any signature "an unnecessary formality." Here are some key paragraphs from that Forbes article:

This case means that pressing "send" on an email is now potentially equivalent to signing a piece of paper containing whatever statements appeared in the email. An actual typed signature is not necessary....

The moral of the story: before sending an email that could be interpreted as committing to some

agreement, consider whether that's what you really want. If not, make it clear in writing that your email isn't intended to create any form of binding agreement.

Many standard email disclaimers say exactly that, automatically, on every message that goes out. Careful email senders should not rely on those disclaimers to protect them. If an email sounds like a serious and meaningful agreement to material terms, the courts just might decide that's what it is, and enforce it accordingly.

Although that was the decision of a New York State appellate court, we should probably consider that Colorado courts or the United States Supreme Court might issue a similar

opinion. So, how does this affect buyers and sellers of real estate?

If you're represented by a real estate agent, you're not sending emails directly to the other party in a transaction, but if you are unrepresented and you exchange emails with a prospective buyer or investor, you could easily find yourself negotiating and agreeing to terms and price before undertaking the creation of a contract with various other important terms and deadlines. Be careful!

At the very least, when discussing price and terms with a prospective buyer or seller, always add that "this is not a contract, which still needs to be created separately and signed by both parties."

Support Habitat for Humanity at the Pumpkin Patch at Garrison & Alameda



Every October, Jeffco Interfaith Partners raises \$25,000 or more by selling pumpkins at its Lakewood Pumpkin Patch. The pumpkins are grown by a native American tribe in the Four Corners area, which gets 60% of the proceeds. That leaves 40% of the proceeds to fund the building of a Habitat home in the Denver metro area. Buying a pumpkin from this patch is a great way to support Habitat for Humanity of Metro Denver as well as our native-American partners.

Jeffco Interfaith Partners operates a second pumpkin patch on Wadsworth Blvd. at 78th Avenue, previously on the grounds of the Arvada Center for the Arts one mile south. Both patches are open from 10 a.m. to dusk every day. 40% of your purchase is tax deductible.

Just Listed: Patio Home in 55+ Community Near Belmar

If you're looking for a maintenance-free patio home in a great 55+ community, this home at 7445 W. Maple Drive in "The Villas" might fit the bill for you. This super-friendly community is just two blocks north of the Belmar shopping district. The home is tri-level but equipped with stair elevators to access all three levels. The unfinished basement provides lots of storage. The home sits at the rear of the subdivision, and offers a wide mountain view from the master bedroom. The location also puts it just 25 yards from the HOA's community garden. On the home's main level is the eat-in kitchen and living room/dining room with its wood-burning fireplace. Outside a sliding glass door is a 15'x21' fenced private patio. A half-flight down is the family room, laundry room and garage. A half-flight up are the three bedrooms and two bathrooms. Take the narrated video tour online at www.LakewoodPatioHome.info. I'll be holding it open this **Saturday, Oct. 16th, 2 to 4 pm.** Or call me to set a showing.



Our Commitment: Keeping Styrofoam Out of Landfills

A big part of Golden Real Estate's commitment to sustainability is our acceptance of polystyrene in the Styrofoam Corral (open 24/7) behind our Golden office.

At least twice every month we take a truckload to Centennial Containers in Aurora. There the material, which is 95% air, is "densified," compressed into bars which are then delivered to a company which recycles those bars into new polystyrene or other plastic-based products.

Our polystyrene recycling is only one aspect of Golden Real Estate's

commitment to sustainability which won us our second Sustainability Award from the City of Golden in 2020. Since receiving our first award in 2010, we transitioned our building to Net Zero Energy in 2017 by removing our natural gas meter and installing a heat pump mini-split system to heat and cool our office electrically. Our 20-kW solar PV system provides all the electricity for powering our office as well as charging our five Tesla vehicles and providing free EV charging to the general public in our parking lot.



Every element of this ad is also posted at GoldenREblog.com

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