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THE REGISTER CITIZEN

MARKET MATTERS: Doing business by text message? Be careful what you text!

By David Shufirin
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Photo: Contributed Photo; David Shufirin

At some point, we all have made a deal on “handshake.” Whether on the playground, at home or in the office, doing business on a handshake comes naturally. However, as technology evolves, so does the way we conduct business.

In the past, a handshake agreement typically was preceded by verbal discussion. When that resulted in an exchange of things or promises, a legally binding contract was formed — whether or not you actually shook hands. While verbal discussions can still create a contract, deals are increasingly being made by text message.

Business owners often ask: can I be legally bound by a text message? With some exceptions, the answer is generally yes. With text messaging becoming one of the most prevalent forms of communication, it has become increasingly common to see text messages used as evidence in court.

But should a text message be treated like verbal communication or more like a written agreement? After all, most of us use text messages casually and approach text messaging with the same sense of informality as a conversation. Unlike drafting a letter or email, text messages often use language that mimics the way we speak. At times, it may seem like we've forgotten how to use full sentences or even proper grammar. In business, however, it is important to remember that the law does not recognize this informality.

Contrary to what some people think, you do not necessarily have to put an agreement in writing for it to form a valid, binding contract. In fact, the recipe to form a contract contains three simple ingredients: an offer, an acceptance and consideration. When two or more people reach an agreement (offer and acceptance) to exchange things or promises of value (consideration), a contract is formed.

In certain instances, the law does require a written, signed agreement to create a contract. Common examples include the sale of real estate, goods valued over \$500, or contracts that cannot be performed in less than a year. In those instances, the law asks: (1) is a text message a writing; and (2) was the text message signed?

In 2002, Connecticut adopted the Uniform Electronic Transactions Act (UETA) to address these questions in electronic transactions. The act provides that any time the law requires a "writing" or a signature, then an electronic record or an electronic signature is sufficient. Text messages, therefore are "writings" under UETA.

However, whether the text message contains an electronic signature will depend on its content. Under the UETA, an electronic signature is any "electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record." In other words, the court must examine the text message to see whether you intended it to act as your signature.

For example, a Massachusetts court recently examined whether a contract for the sale of real estate could be created through text messages. The court ruled that text messages could satisfy the requirement of a signed writing and that the text messages in question were signed when the sender included his name at the end of the message. This decision and others like it should serve as an important reminder to take your text messages seriously.

Whether you are transacting business verbally or by text message, beware of informality. Use clear and precise language, as even the most informal communications can have legal significance. And please, don't "sign" your name at the end of your text messages!

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