

# Text Messages Can Form Contract

From NAR Legal Division

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Two courts from Massachusetts have determined that parties can enter into a valid real estate purchase contract via text message. However, both courts ruled that no contract was formed via text, as the real estate professional lacked the authority to bind the principal in the first case and the purported agreement failed to satisfy the Statute of Frauds in the second instance. [Read More](#)

In [\*St. John's Holdings, LLC v. Two Electronics, LLC\*](#)([link is external](#)), a company was seeking space for its medical marijuana facility. After locating a suitable space, the parties began their discussions and the principals for each company met twice to establish a contractual framework for the transaction. Following the second meeting, the owner told the buyer to work through the listing broker for the remainder of the discussions.

After a series of offers were made, the buyer then sent a third offer containing all of the changes requested by the seller. The listing broker then sent the following text:

Steve. It [Seller] wants you [Buyer] to sign first, with a check, and then he will sign. Normally, the seller signs last or second. Not trying to be stupid or contrary, but that is the way it normally works. Can Rick [McDonald] sign today and get it to me today?  
Tim.

The buyer delivered a signed offer along with the deposit check. The seller never deposited the check nor signed the agreement but instead entered into an agreement to sell the property to another party. The buyer brought a lawsuit claiming that the listing broker's text created an offer that they accepted by delivering a signed offer and the deposit check to the listing broker.

The Massachusetts Land Court, Essex County, ruled that the text failed to establish a contractual relationship between the parties. The court found that while the parties could form a contract via text message, the parties would need to have a written agreement that contains all of the material terms and is signed in order to satisfy the Statute of Frauds.

The court ruled that the earlier negotiations between the parties had created a contractual framework that satisfied the Statute of Frauds but the listing broker did not have the authority to bind the seller. The principals had negotiated the framework of the agreement that contained all of the material terms and the listing broker had signed his text message, but the listing broker's text did not constitute an offer to the buyer. While the seller had told the buyer to work through the listing broker, the court concluded that it was clear to all the parties that the listing broker was merely an intermediary and did not have authority to sell the property. Therefore, the seller was not bound by the listing broker's text and there was no contract between the parties.

[\*Donius v. Milligan\*](#)([link is external](#)) involved a residential property on Cape Cod. After the buyers visited the property, the real estate professionals began negotiating the terms of a possible purchase through email and texts. Here are the texts sent back and forth:

May 12

[Buyer's Rep]: Good afternoon. I emailed an offer over to you for 93Commercial.

[Listing broker]: Hi Mike. Won't hear back til morning. Talk to you then.

May 13

[BR]: Hi, he said he would split the difference at \$962,500.

[LB]: OK. I'll convey.

May 14

[LB]: Hi Mike. The sellers accept the price.

Following receipt of the last message, the buyer's representative emailed the listing broker a signed purchase agreement plus a copy of an earnest money check. The check was never sent to the listing broker and the seller never signed the agreement, and the seller then sold the property to another buyer. The buyer brought a lawsuit seeking to enforce the contract.

The Massachusetts Land Court, Barnstable County, ruled that there was no agreement between the parties. While the court found that the parties could create a real estate contract through text messages, the negotiations here did not create a contract. Unlike the first case, the buyer and seller had never discussed the contractual terms, such as a financing clause and inspection clause. Further, the text message failed to satisfy the Statute of Frauds, as the messages did not contain any of the material terms of the transaction except for the price and the messages were not signed by the parties. Thus, there was no contract formed via text message.

[St. John's Holdings, LLC v. Two Electronics, LLC, No. 16 MISC 000090, 2016 WL 6191911\(link is external\)](#) (Mass. Land Court (Essex Cty.) Oct. 24, 2016). [This is a citation to a Westlaw document. Westlaw is a subscription, online legal research service. If an official reporter citation should become available for this case, the citation will be updated to reflect this information].

[Donius v. Milligan, No. 16 MISC 000277, 2016 WL 3926577\(link is external\)](#) (Mass. Land Court (Barnstable Cty.) July 25, 2016). [This is a citation to a Westlaw document. Westlaw is a subscription, online legal research service. If an official reporter citation should become available for this case, the citation will be updated to reflect this information].