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The Handshake Deal That Becomes a Lawsuit: When Email and Text Threads Count as a Binding Contract

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A Montana builder's representative texted a homeowner: “we are happy with all the terms you laid out... But 2.8 is a stretch for us.” The homeowner replied: “Glad we could reach agreement. What is the name and contact points of your attorney?” The answer came back with a name and phone number. Nothing was signed. In 2024, the Montana Supreme Court still held those three texts formed a binding $2.8 million contract — they had a price, identified the property, and showed both sides believed a deal was done. Disagreements over the formal paperwork came too late to undo it.

That's the rule reshaping business risk generally: a contract doesn't require a signature page. It requires only that a reasonable person, reading what was said and done, would conclude the parties agreed to be bound. Courts call this the objective theory of contract, and it means an email inbox or text history can be read back in litigation as the deal itself — regardless of how informal the channel felt at the time.

Where the Line Falls

Definiteness beats tone. A specific price and subject matter, with no open conditions, can bind you even in a text message. By contrast, the Alabama Supreme Court held in a 2025 case that a reply agreeing to settlement terms but adding “a mutually agreeable release” and undefined future clauses was a counteroffer, not an acceptance — tacking on open conditions means the parties only agreed to keep negotiating.

Reservation language works, if it's actually used. A California appellate court enforced a proposal that stated on its face it was “for discussion purposes only” and “does not serve as a binding agreement” — even though the parties kept negotiating afterward. The words “subject to a signed, definitive agreement” do real legal work. Their absence does too, in the other direction.

Electronic signatures cut both ways in California. The state's UETA statute says a typed name or email sign-off can count as a real signature — but in *J.B.B. Investment Partners v. Fair*, a California court held that a party's emailed “I agree” and printed name did not bind him, because the parties had never agreed to conduct that specific transaction electronically. The analysis is fact-specific, not automatic.

Real estate has its own trap door. California's statute of frauds requires real property sales to be signed and in writing, and courts are split on whether a typed name in a text satisfies that — enforced in Montana and Massachusetts cases, rejected in a similar Florida case. Authority matters too: even an unequivocal “yes, deal” doesn't bind a company or owner if the sender lacked authority to say so.

Final Thoughts

This doesn't mean you should stop negotiating over email or text — that's not realistic. It means the informal channel carries the same legal weight as a signed document the moment your language gets specific and unconditional. If you're not ready to be bound, say so in the message itself. If you are, recognize you may already be — whether or not anyone ever drafts the version with signature lines.

About the Author

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