

## ASK THE EXPERT- BE CAREFUL WITH E-MAIL AND VOICE MAIL

Business Enterprises Law, Real Estate Law Practice Groups

June 1, 2008

Author: Jack S. Levey  
Direct: (614) 629-3002  
jlevey@plunkettcooney.com

Most Commercial Real Estate Women (CREW) Columbus members know the rule that real estate contracts cannot ordinarily be enforced unless they are in writing. But the rules have changed in today's age of electronic communication. Many people do not know that e-mail, and even voice mail, can meet the requirement for a signed written agreement. Leaving the wrong telephone message could trap you in an unintended contract, even if the deal involves real estate.

Like many other states, Ohio enacted the Uniform Electronic Transactions Act ("UETA") in 2000. The UETA, Chapter 1306 of the Revised Code, reduces the protection usually afforded certain types of contracts, including agreements to buy or sell real estate. Traditionally, these contracts could not be enforced unless the agreement was evidenced by (a) a writing, (b) containing the essential terms of the deal; and (c) signed by the party that the contract was to be enforced against. The signature could consist of any mark or symbol that the signing party intended to show that she agreed to the terms. (The document did not have to be signed by the party who was seeking to enforce the contract.)

Under the UETA, an electronic record can have the same legal effect as a written document. The UETA defines electronic records broadly. A "record" is "information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form." An "electronic record" means "any record created, generated, sent, communicated, received or stored by electronic means." E-mail and voice mail are electronic records.

What about the signature? The UETA gives electronic signatures the same force as traditional written signatures. Typing your name at the bottom of an e-mail, or saying your name as part of a voice mail, can be a signature as defined by the UETA, which states that an electronic signature is "an 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."

The UETA applies to a transaction if both parties have each agreed to conduct transactions by electronic means. The agreement to conduct the transaction by electronic means is determined from all of the surrounding circumstances and context, including conduct of the parties.

Some businesses flatly refuse to negotiate (or even discuss) deal terms by e-mail. If you do negotiate by e-mail, it's a good idea to include a disclaimer in each e-mail, warning that the message is not intended to be an offer, acceptance, or otherwise contractually binding. For the

same reason, a party negotiating a deal should never leave a voice mail message detailed enough to inadvertently create a contract. In short, never say anything in an email or voice mail that you would not say in a signed document.

Jack Levey, a CREW member since 2007, practices real estate law and business law with the Columbus office of Plunkett Cooney, and is co-author of the three-volume reference work, Kuehnle & Levey, "Baldwin's Ohio Practice, Ohio Real Estate Law" (3d ed. West, 2003). He can be reached at (614) 629-3002.