

AND ACCEPTANCE E-MAIL OFFERS

by Cynthia A. Lammert

an e-mail retrievable from computer storage nication originally written or typed on paper, serves the purpose of the statute of frauds," the

sued for breach of contract on the right of first owner agreed to sell the property to a third subsequent e-mails, only to discover that the party without giving the buyer an opportunity cant due diligence expense, arranged through of first refusal. The buyer then incurred signifioffer, conveyed a counteroffer for \$52M, and estate broker acknowledged the buyer's \$50M 55th Street in Manhattan. The owner's real agent in respect to real property at 15-19 West to exercise his right of first refusal. The buyer then allegedly granted the buyer a 30 day right between a buyer and the owner's real estate Naldi arises from a 2007 exchange of e-mails

of informal negotiations

electronically, believing

brokers communicate attorneys and real estate

that they have the luxury

commonplace. Many

casual use of e-mail is business environment,

n today's hyperkinetic

by keystroke, and that no

agreement is made unless

rejected the owner's statute of frauds argument, with the statute of frauds. The appellate court only in an email, and hence was not compliant and the owner's motion for leave to appeal was ing that the right of refusal was memorialized The owner moved to dismiss the lawsuit, argudenied in May 2011.

offer or acceptance via those who convey an ments are inked. However, and until paper docu-

email may unwittingly bind

themselves or their client

to a real estate purchase

or lease agreement.

his own accord and types his own name as he of an e-mail types and sends the message on more indicative of a party's intent to authenthat "the typed name at the end of an e-mail is Mass.L.Rptr. 360, a Massachusetts court held Shattuck v. Klotzbach (Mass. Super. 2001), 14 ticate than that of a telegram as the sender honor e-mail communications as binding. In Other courts likewise seem to be inclined to

parties, courts nationwide are now considerto have original documents executed by the Although it remains the conventional practice

ing electronic agreements to have the same

gested that typewritten signatures, including transaction, at least one Ohio court has sugfor purposes of statute of frauds in real estate to whether an email suffices as a signature While there are few Ohio court cases relating those in a telegram, are adequate. See Hart v.

subscription meet all requirements." The Naldi

the statute of frauds so long as its contents and unanimously held that "an e-mail will satisfy

07079, a New York appellate division court

In Naldi v. Grunberg, et al., 2010 N.Y. Slip Op.

court expansively interpreted the term "writ-

electronic signatures. "As much as commuencompass electronic communications and ing" as used in New York's statute of frauds to

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Oak Park Associates (Sept. 14, 1984), 6th Dist. No. L-84-031.

a seller of real property accepted the offer of agent. The seller's agent sent an e-mail to the a buyer via email correspondence from seller's I will send you addendums and instructions, need to get a few things out of the way, then buyer, stating "your offer has been accepted, I 24986, 2010-Ohio-2736, the court found that In Bergey v. HSBC Bank USA, 9th Dist. No.

the e-mail communication sufficed. how written acceptance was to be made, and so of the buyer's offer, the offer did not prescribe was invalid because the buyer did not sign the the contention that the buyer's acceptance cepted the buyer's offer. The court also rejected the Bergey court determined that the seller acto the additional addenda and instructions, was not conditioned upon the buyer's assent Because the acceptance of the buyer's offer required to be in writing pursuant to the terms offer to purchase. Although acceptance was

Ohio's Statute of Frauds, R.C. 1335.05, states:

(Emphasis added.) by him or her lawfully authorized. or some other person thereunto by the party to be charged therewith note thereof, is in writing and signed is brought, or some memorandum or the agreement upon which such action year from the making thereof; unless that is not to be performed within one cerning them, or upon an agreement or hereditaments, or interest in or concontract or sale of lands, tenements, to charge the defendant (...) upon a No action shall be brought whereby

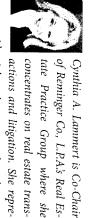
agreement, the substantive requirements are form of writing necessary to constitute a valid While the statute does not specify the type or

> App.3d 471, 483. essential terms with reasonable certainty." a contract has been made; and (3) states the matter of the agreement; (2) establishes that Frauds so long as it (1) identifies the subject defined by common law. "A signed memo-Landskroner v. Landskroner (2003), 154 Ohio randum is sufficient to satisfy the Statute of

54 Ohio St.2d 147, 151-152. by both," then a prior acceptance will not onstrating that the parties did not intend to Berjian, D.O., Inc. v. Ohio Bell Tel. Co. (1978), Beiser, 2010 Ohio 5427, §33, citing Richard A. an actual document. See Artisan Mech., Inc. v. suffice to bind a party until memorialized in formalized in a written document and signed be bound by the terms of an agreement until However, "where there is clear evidence dem-

the principal. agent to qualify such communications by statthemselves. It is also prudent for a broker or are mutually executed between the parties teroffer or acceptance until paper documents the content may not be deemed an offer, counall e-mail communications clearly stating that advisable to include a standard disclaimer in counteroffer or acceptance of the same, it is forms the basis of the terms of an offer or ing that the broker is not authorized to bind where it is arguable that the communication Accordingly, in any email communications

signature. Adhering to the foregoing practices ment was made via an e-mail exchange. may be deemed binding and valid if the client Similarly, parties who represent a buyer or litigation over whether or not a binding agreeopposing party in negotiations and potential will help a client to avoid both leverage by the cept certain terms and includes an electronic expresses a willingness in the e-mail to actheir client's communications to the other party or the other party's agent, as these also seller should use caution before forwarding



She can be reached at (216) 430-2212 or vacant land, and condominium transactions. escrow companies in residential, commercial, sellers, developers, builders, and title and brokerages and agents, individual buyers and clammert@reminger.com. sents residential and commercial real estate actions and litigation. She repre-



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