

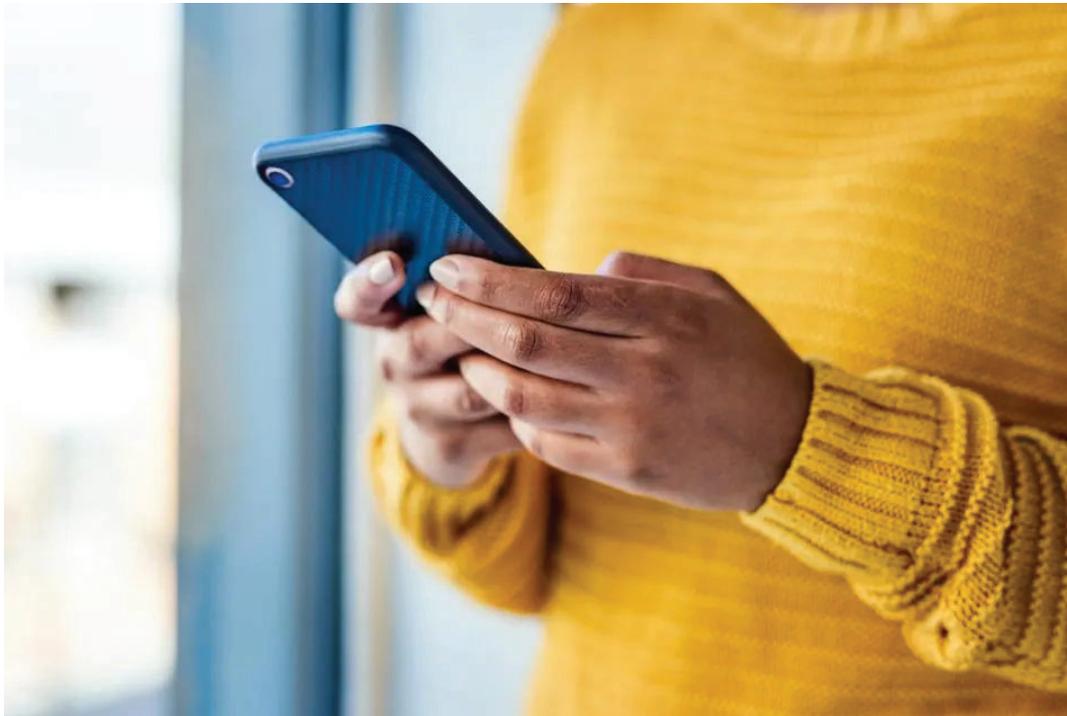
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Text Messages Can Create A Binding Contract – Sometimes

Joshua Stein Contributor 

I write about commercial real estate negotiations, deals and legal issues.

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With the proliferation of smartphones, legal communications via text message are becoming more common. But are these messages binding? [-] GETTY

People in the real estate business, and other businesses, often agree to things by email or even text messages. Are those agreements legally binding?

A recent New York [case](#) involving a lease dispute seemed to recognize the possibility that an exchange of text messages could bind the parties. Under the facts of that case, however, the court decided the text messages in question didn't quite do it.

In the litigation, a property owner had sued a tenant for about \$200,000 of unpaid rent. (It must have been a pretty nice apartment.) The property owner's representative and the tenant exchanged text messages confirming a "settlement amount" of \$143,000, with the security deposit to be credited against it. The tenant said he would prepare a settlement agreement. The property owner's representative said he wanted to inspect the apartment.

The tenant argued that the exchange of text messages entitled him to conclude the dispute by paying \$143,000. The property owner didn't agree, based on two arguments, which the court accepted.

First, the exchange of text messages didn't contain all the "material terms" of the settlement agreement. Presumably the property owner's caveat about inspecting the apartment implied the inspection might result in additional terms of the settlement, such as an obligation for the tenant to remove broken furniture from the bedroom or repaint the bathroom.

On the other hand, if the court had wanted to treat the text messages as binding, the court might have concluded that the property owner simply wanted to check that the apartment was in reasonable shape, a fairly standard requirement that the court didn't necessarily have to conclude was "material." The court could have said – but didn't say – it was a sufficiently trivial loose end that the parties could still be bound by their text messages.

The second reason the text messages weren't binding, according to the property owner and the court, was the fact that they

acknowledged the parties would still enter into a formal agreement to memorialize the settlement. If such an agreement was necessary, then implicitly the exchange of text messages couldn't stand on its own as a binding agreement.



On that question, too, the court could have come out differently. Maybe the court could have inferred that the future settlement agreement was merely a formality to implement an agreement that was already binding. It's hard to tell whether the facts would have supported that.



Although the court decided this particular exchange of text messages didn't bind the parties, the court came to that result based on the specifics of these particular text messages, and not because of a general principle that text messages can't be binding. To the contrary, the case implies that in some cases text messages can be binding. That's hardly new law, but it may come as a surprise to some.

If one's goal is for text messages to be binding, one should avoid suggestions that any binding agreement requires further documentation. On the other hand, if one wants text messages not to be binding, the messages should unambiguously state that additional steps need to occur before there's a binding agreement. The right approach can help prevent surprises. No one should ever assume that text messages are always binding or always not binding.

**Joshua Stein**

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I help buyers, sellers, borrowers, lenders, tenants, property owners, and other commercial real estate market participants identify and achieve their business goals. To do that, I need to understand risk, security, numbers, value, financeability, flexibility, and exit strategy. Some legal issues matter a lot and many don't. It's important to know the difference. I write extensively on commercial real estate law and practice – over 300 articles and five books on leasing, lending, and other areas, with some emphasis on ground leases. I occasionally serve as an arbitrator or expert witness in complex real estate disputes. That lets me see how transactions go wrong. Often, the problems could have been avoided by keeping it simple and following the money, but everyone got sidetracked. As a Forbes contributor, I try to tell stories that teach worthwhile lessons for real estate deals.