

CAN AGREEMENT BY EMAIL BE LEGALLY BINDING?

Email is one of those tools that most of us use every day and when it comes to negotiating the finer detail of a contract it's not uncommon to nut out the sticking points via the quick and convenient email.

Often, what will happen is the authorised representatives will bounce the issues back and forth and when everyone is satisfied, the contract is created with a printed page and signed with a pen.

But what happens when a seller and buyer agree on price in an email negotiation, through their nominated representatives, and then one party pulls out?

Have they entered into a binding contract?

Generally speaking, an email is not a contract. While price is certainly one of the most important elements of the contract, it doesn't represent every element – there are still other terms of settlement, any special conditions such as finance or building and pest inspections to still be agreed upon.

Again, generally speaking, for it to be a contract, *all* key elements must be agreed to make it binding.

Last year a precedent was set when the Queensland Supreme Court held that email negotiations between a seller's authorised representative and a prospective buyer's authorised representative constituted a binding contract.

The property in question was a service station, not a residential property, but the principles still apply.

The email exchange between the parties included the key specifics of the deal, namely what was to be sold, the purchase price, the deposit, when the stock was to be valued, the duration of the due diligence, and when and where settlement would take place.

The sellers tried to back out of the contract and so the buyers took them to court. The Supreme Court agreed with the buyers, that the email negotiations provided enough certainty on terms to constitute a binding contract under the Property Law Act 1974.

So when you're negotiating by email the terms of your property purchase or sale, it is important now that you understand there is now the potential to be bound by that negotiation.

Don't fall into the trap of thinking that you're not legally bound until you pick up the pen and paper, because the potential is certainly there for it to become a binding contract.

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