

# UCC Tip of the Month - Unwritten Contracts Still Enforceable Under Statute of Frauds

December 1, 2013

Matthew J. Boettcher  
(248) 901-4035  
mboettcher@plunkettcooney.com

You mean my contract isn't void under the Statute of Frauds? This is one of the many questions Plunkett Cooney attorneys are asked by clients who are uncertain about the validity of their unwritten contracts.

The February 2013 UCC Tip of the Month examines valid oral contracts and those that need to be in writing to have a chance to be enforceable under the statute of frauds. Indeed, contracts for the sale of goods under the Michigan version of the Uniform Commercial Code are measured under the statute of frauds found in MCL 440.2201. And as previously addressed, the first bench mark under §2210(1) is whether the contract price for the sale is at least \$1,000. Specifically, MCL 440.2201(1) states:

Except as otherwise provided in this section, a contract for the sale of goods for the price of \$1,000.00 or more is not enforceable by way of action or defense unless there is a writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his or her authorized agent or broker.

This means that if you are buying or selling goods for a price of at least \$1,000, your contract needs to be documented in a writing, and that writing also needs to be signed by the party against whom enforcement is sought, whether that be the buyer or the seller. This may seem self-evident, but quite commonly the sale of goods – particularly in an internet driven world – are accomplished with the buyer and seller never meeting or speaking. Writings to help prove the contract typically will exist – signed writings are another matter. In practical terms, the safest bet is have both buyer and seller sign the writing when the contract is formed; if that is possible or practical – There are some special rules in §2201(2) that apply when the contract is one between “merchants,” which is a topic for another time.

As we all know, however, the business world moves fast, and all too often a signed writing is nowhere to be found. What then? Is the contract void and therefore unenforceable? Perhaps not, because the UCC was intended to preserve and enforce contracts that under the common law otherwise would

UCC TIP OF THE MONTH - UNWRITTEN CONTRACTS STILL ENFORCEABLE UNDER STATUTE OF FRAUDS  
Cont.

have failed.

To determine the enforceability of an oral contract for a price exceeding \$1,000 we look to §2201(3) and ask three questions: (a) are the goods specialty goods that not are not suitable for sale to the seller's other customers; (b) has the party against whom enforcement is sought admitted to the contract in court or in court papers; or (c) has payment been made and accepted or have the goods been received and accepted within the meaning of section 2606 (a topic for future discussion)? If the answer to any of those questions is "yes," you *may* have an enforceable contract despite the absence of a signed writing.

The statute of frauds in §2201 is very real and one should not assume that it can be bypassed merely for convenience or because from past practice things *have always worked themselves out*. You need to know what to do when the other side isn't interested in working it out. Knowing the rules is just the first step. And in those cases when a signed writing cannot be identified and a dispute is brewing, Plunkett Cooney's attorney can help navigate the statute of frauds toward your preferred outcome.