

A landlord leased a building to a tenant for a term of six years. The lease complied with the statute of frauds and was not recorded. During the lease term, the tenant sent an email to the landlord that stated: "I hereby offer to purchase for \$250,000 the building that I am now occupying under a six-year lease with you." The tenant's name was placed below the word "signed" on the message.

In response, the landlord emailed the tenant: "That's fine. We'll close in 60 days." The landlord's name was placed below the word "signed" on the reply message.

Sixty days later, the landlord refused to tender the deed to the building when the tenant tendered the \$250,000 purchase price. The tenant has sued for specific performance.

Who is likely to prevail?

- A. The landlord, because formation of an enforceable contract to convey the building could not occur until after the lease term expired.
- B. The landlord, because the landlord's email response did not contain a sufficient signature under the statute of frauds.
- C. The tenant, because the email messages constitute an insufficient attornment of the lease.
- D. The tenant, because the email messages constitute a sufficient memorandum under the statute of frauds.

Explanation:

Statute of frauds requirements for real estate contracts

Writing	Physical or electronic document(s) containing reasonable basis to believe contract was formed
	eg, receipt, check, emails
Signature	Handwritten signature from, or other mark identifying, party to be charged
	eg, letterhead, electronic signature, initials
Essential terms	Typically includes: identity of parties words of intent to buy or sell property description sales price

Under the **statute of frauds**, contracts for the sale of land must meet three requirements to be enforceable:

Writing – physical *and* electronic document(s) evidencing a contract (eg, the parties' emails)

Signature – an identifying mark from the party against whom enforcement is sought

Essential terms – the parties' identity, words of intent to buy and sell, land description, and price term (all of which appear in the parties' emails)

The **signature** requirement is met so long as the **identifying mark reflects an intent to authenticate** the writing. Here, the tenant's and the landlord's names were placed below the word "signed," so their signatures show their desire to be bound (**Choice B**). And since their emails fulfill the other statute of frauds requirements, they constitute an enforceable memorandum. Therefore, the tenant is likely to prevail in his suit for specific performance.

(Choice A) An enforceable contract to convey a building can be formed during the lease term (as seen here) or thereafter.

(Choice C) Attornment refers to a tenant's agreement to be bound by a lease when there is a new landlord (eg, by sale or foreclosure). Here, the tenant seeks to purchase the property, so attornment is not an issue in this case.

Educational objective:

The signature requirement for the statute of frauds is met if an identifying mark from the party against whom enforcement is sought reflects an intent to authenticate the writing.

References

73 Am. Jur. 2d Statute of Frauds §§ 289, 305, 325, 329 (2020).

Copyright © 2013 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.