

SELLING LAND:

Verbal Agreements can be Enforced

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Tom and Sally own neighbouring cottage properties on a lake shore. Tom sells his cottage property conditional upon the installation of a new septic system. However, he can't install a new septic system without purchasing a portion of abutting lands from Sally. Tom and Sally exchange emails and have an oral discussion about the sale of a portion of Sally's land at a purchase price to be paid at a later date. They sign an easement agreement so that Tom can have immediate access to the land, and a deed transferring a portion of Sally's land to Tom so that Tom can apply for a permit to install a septic system. Subsequently, Tom incurs financial hardship and pays Sally only a portion of the agreed-upon purchase price. Can Sally enforce their agreement?



Although contracts reached orally or by email can be valid and binding, in order to have clear and undisputed terms that set out both of the parties' rights and obligations, it is vastly preferable to have a written, signed agreement of purchase and sale.

Is There an Agreement?

The courts have concluded that an exchange of emails may constitute an agreement in writing for the sale of land, if the agreement contains all of the essential terms of a contract for the sale of land, such as the parties involved, the price, and the property in question. The existence of an agreement does not depend on a formal written document; a valid and binding agreement exists if the parties have agreed on all of the essential provisions of an agreement orally and they intend the agreement to be binding. Further, such agreements can be for the purchase and sale of the entire land or a part of the land.

Is the Agreement Enforceable?

Section 4 of the *Statute of Frauds* states that to be enforceable, agreements regarding land must be in writing and signed by the transferring party. In this case, the agreement was in writing, but there were no signatures; thus, the agreement was not enforceable under the Statute of Frauds.

In What Other Ways Could the Agreement be Enforceable?

In some cases, contracts that are otherwise unenforceable can become enforceable through what is called "part performance", where a party carries out his or her contractual obligations, the other party knows that those obligations have been carried out,

and those obligations are to the detriment of the first party. The delivery of an offer to purchase land and a deposit would not normally amount to an act of part performance, but in this case, Sally executed an easement agreement and deed. The courts determine what constitutes part performance on a case-by-case basis, but Sally would be able to claim that an enforceable agreement for the purchase of the land exists, according to the doctrine of part performance.

The Value of Written, Signed Agreements

Although contracts reached orally or by email can be valid and binding, in order to have clear and undisputed terms that set out both of the parties' rights and obligations, it is vastly preferable to have a written, signed agreement of purchase and sale. Also, never sign and deliver a document transferring title to your property to someone else before you have received the full purchase price. Lawrence's Real Estate Group has extensive experience in drafting agreements for the purchase and sale of land and can help you determine exactly how your agreement should be structured.



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