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Amendment to Statute of Frauds Seeks to Clarify Role of “Ephemeral” Electronic Communications in Real Estate Transactions

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With the passage of Assembly Bill 2136, the California legislature has imposed new limits on parties' ability to rely on so-called ephemeral electronic communications in the creation of binding contracts for the sale of real property. Through an amendment to the Statute of Frauds that took effect on January 1, 2015, AB 2136 provides that an electronic message of an ephemeral nature that is not intended to be retained or to create a permanent record, such as a text message or instant message, is not sufficient, without separate written confirmation, to create a contract to convey real property.

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