

# Is my agreement enforceable under the Statute of Frauds? The Bullet Point: Volume 3, Issue 17

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## Open Meeting Act

### **State ex rel. More Bratenhal v. Village of Bratenahl, Slip Op. No. 2019-Ohio-3233.**

This appeal involved a challenge to a village's compliance with Ohio's Open Meeting Act. Certain villagers challenged whether the village complied with the act when it elected a council officer by secret ballot. The Ohio Supreme Court ultimately held that this violated Ohio's Open Meeting Act.

**The Bullet Point:** Ohio's Open Meetings Act commands, "All meetings of any public body are declared to be public meetings open to the public at all times." And it further provides, "A resolution, rule, or formal action of any kind is invalid unless adopted in an open meeting of the public body." Likewise, the Act "shall be liberally construed to require public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law."

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## Arbitration as a Class Action Defense

### **Gemarski v. PartsSource, Inc., Slip. Op. No. 2019-Ohio-3231.**

In this appeal, the Ohio Supreme Court found that in a putative class action, "when the case originates with a single named plaintiff and that plaintiff is not subject to an arbitration agreement that was entered into by unnamed putative class members, the defendant need not raise a specific argument referring or relating to arbitration in the answer—Defendant may raise an argument that relates to arbitration against putative class members at the class certification stage of proceedings."

**The Bullet Point:** Usually, unnamed putative class members are not parties to an action prior to class certification. "Certification of a class is the critical act which reifies the unnamed class members and, critically, renders them subject to the court's power." Because of this, and as the Ohio Supreme Court held, "it follows that if unnamed putative class members are not parties to an action, then a defendant is under no duty to raise in its answer, or at any time prior to the class-certification stage, defenses that relate only to those unnamed class members."

## Enforcing a Settlement Agreement

### **Pollock v. Trustar Funding, LLC, 8th Dist. Cuyahoga Nos. 107355 and 107679, 2019-Ohio-3272.**

After determining that the trial court retained jurisdiction post-dismissal to enforce the terms of the settlement, the Eighth Appellate District found the trial court did not err when it enforced the terms of the agreement.

**The Bullet Point:** When a party dismisses a case pursuant to a settlement agreement, the trial court has jurisdiction to enforce a settlement agreement after a case is dismissed, if the dismissal entry incorporates the terms of the agreement or expressly states that the trial court retains jurisdiction. The Supreme Court of Ohio explained that the rationale for allowing the trial court to retain jurisdiction over a settlement agreement is that “[r]etaining jurisdiction provides the most efficient means of enforcing the agreement. It keeps the matter in the court most familiar with the parties’ claims, if not their settlement positions. And it keeps the parties from having to file another action.” The same holds true for consent judgments. A settlement agreement is governed by contract law.

“[T]o constitute a valid contract, there must be a meeting of the minds of the parties, and there must be an offer on the one side and an acceptance on the other.” “‘Meeting of the minds’ refers to the manifestation of mutual assent by the parties of an agreement to the exchange and consideration, or to the offer and acceptance.”

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## Statute of Frauds

### **Duncan v. Fifth Third Bank, 2d Dist. Greene No. 2018-CA-50, 2019-Ohio-3198.**

In this appeal, the Second Appellate District found that any agreement between the parties was unenforceable because it violated the statute of frauds, and the promissory estoppel exception did not apply.

**The Bullet Point:** Ohio’s statute of frauds provides that an action on a contract for the sale of real property must be in writing and signed by the defendant. “Agreements that do not comply with the statute of frauds are unenforceable.” Promissory estoppel can be an exception to the statute of frauds in narrow circumstances. However, and as the Ohio Supreme Court has held, “the breach of an oral promise to sign an agreement does not remove an agreement from the signing requirement of the statute of frauds. Consequently, a party may not use promissory estoppel to bar the opposing party from asserting the affirmative defense of the statute of frauds.”

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