DUTY TO RESOPND

**Essential elements of a Contract w/ Arbitration Clause**

It is essential to the existence of a contract that there be:

"(1) Must be between two or more parties capable of contracting;

"(2) That there’s an expiration date; and

"(3) Opt-out clause; and

"(4) Value and consideration."

“(5) Is doable and or workable; and

“(6) Include an Arbitration clause; and

“(7) Include a Commerce clause; and

“(8) Must have a prior relationship; and

“(9) A Duty to respond

*Md. Elec. Indus. Health Fund v. Mesco, Inc.*, Civil Action No. ELH-12-505, at \*12 (D. Md. Feb. 28, 2014) (“Because defendants do not challenge that contention, they have conceded that point. *See McKeel v. United States,*[178 F. Supp. 2d 493, 504](https://casetext.com/case/mckeel-v-us-2#p504) (D. Md. 2001) ("Plaintiff appears to concede this point, as he has failed to respond to the government's argument on this point."); *Burns & Russell Co. of Baltimore v. Oldcastle, Inc.,*[166 F. Supp. 2d 432, 440](https://casetext.com/case/burns-russell-co-v-oldcastle-inc#p440) (D. Md. 2001) ( "Plaintiffs appear to concede this point, as they have failed to respond to this argument."); *cf. Ferdinand-Davenport v. Children's Guild,*[742 F. Supp. 2d 772, 777](https://casetext.com/case/ferdinand-davenport-v-childrens-guild#p777) (D. Md. 2010) ("By her failure to respond to [a moving party's] argument" in support of a dispositive motion, "the [non-moving party] abandons [that] claim."); *Mentch v. E. Sav. Bank, FSB,*[949 F. Supp. 1236, 1247](https://casetext.com/case/mentch-v-eastern-sav-bank-fsb#p1247) (D. Md. 1997) (non-moving party's failure to address in opposition brief an argument raised in opening brief constitutes abandonment of claim).”) [Md. Elec. Indus. Health Fund v. Mesco, Inc, Civil Action No. ELH-12-505 | Casetext](https://casetext.com/case/md-elec-indus-health-fund-v-mesco?q=duty%20to%20respond%20and%20failure%20to%20do%20so%20amounts%20to%20assent&p=1&tab=keyword&jxs=&sort=relevance&type=case#pa53)

****  [Hermosillo v. Davey Tree Surgery Co.](https://casetext.com/case/hermosillo-v-davey-tree-surgery-co?q=duty%20to%20respond%20and%20failure%20to%20do%20so%20amounts%20to%20assent&p=1&tab=ps&jxs=&sort=relevance&type=case#pa53)

Case No. 18-CV-00393-LHK (N.D. Cal. Jul. 13, 2018)   Cited 2 times

or inaction does not constitute acceptance of an offer.'" Norcia, 845 F.3d at 1284 (quoting Golden Eagle Ins. Co. v. Foremost Ins. Co., 20 Cal. App. 4th 1372, 1385 (1993)). "There are exceptions to this rule, however. An offeree's silence may be deemed to be consent to a contract when the offeree has a duty to respond to an offer and fails to act in the face of this duty." Id. at 1284-85. An opt-out provision presents an example of this type of exception. See id. at 1285 (citing Gentry v. Superior Court, 42 Cal. 4th 443, 468 (2007), abrogated on other grounds by Concepcion, 563 U.S. 333)

**** [Norcia v. Samsung Telecomms. Am., LLC](https://casetext.com/case/norcia-v-samsung-telecomms-am-llc-2?q=duty%20to%20respond%20and%20failure%20to%20do%20so%20amounts%20to%20assent&p=1&tab=ps&jxs=&sort=relevance&type=case#pa33)

845 F.3d 1279 (9th Cir. 2017)   Cited 108 times

Leslie v. Brown Bros. Inc. , 208 Cal. 606, 621, 283 P. 936 (1929) ; see also 1 Witkin, Summary of California Law, Contracts § 193 (10th ed. 2005) (collecting California cases). There are exceptions to this rule, however. An offeree's silence may be deemed to be consent to a contract when the offeree has a duty to respond to an offer and fails to act in the face of this duty. Golden Eagle , 20 Cal.App.4th at 1386, 25 Cal.Rptr.2d 242 ; see also Beatty Safway Scaffold, Inc. v. Skrable , 180 Cal.App.2d 650, 655, 4 Cal.Rptr. 543 (1960). For example, in Gentry v. Superior Court , an employee signed

**** [Pang v. Samsung Elecs. Am., Inc.](https://casetext.com/case/pang-v-samsung-elecs-am-inc-1?q=duty%20to%20respond%20and%20failure%20to%20do%20so%20amounts%20to%20assent&p=1&tab=ps&jxs=&sort=relevance&type=case#pa27)

371 F. Supp. 3d 633 (N.D. Cal. 2019)

agree that California law governs the issue of contract formation. The general rule under California law is that "silence or inaction does not constitute acceptance of an offer.... There are exceptions to this rule, however. An offeree's silence may be deemed to be consent to a contract when the offeree has a duty to respond to an offer and fails to act in the face of the duty." Id., 845 F.3d at 1284-85 ; see also Cal. Civ. Code § 1589 ("A voluntary acceptance of the benefit of a transaction is equivalent to a consent to all the obligations arising from it, so far as the facts are known, or

**** [Becker v. One Call, LLC](https://casetext.com/case/becker-v-one-call-llc?q=duty%20to%20respond%20and%20failure%20to%20do%20so%20amounts%20to%20assent&p=1&tab=ps&jxs=&sort=relevance&type=case#pa16)

No. A05-1537 (Minn. Ct. App. Apr. 18, 2006)

every two weeks as a draw against his total commissions. Further, the president's lack of communication to appellant regarding the proposed agreement does not equate to acceptance. "Mere silence ordinarily does not amount to an acceptance; however, if the relationship between the parties is such that an offeror is justified in expecting a reply or the offeree is under a duty to respond, silence will be deemed an acceptance." W. Insulation Servs, Inc. v. Cent. Nat'l. Ins. Co. of Omaha, 460 N.W.2d 355, 358 (Minn.App. 1990). There was no duty between appellant and respondent that would justify

**** [Western Insulation v. Central Nat. Ins. Co.](https://casetext.com/case/western-insulation-v-central-nat-ins?q=duty%20to%20respond%20and%20failure%20to%20do%20so%20amounts%20to%20assent&p=1&tab=ps&jxs=&sort=relevance&type=case#pa35)

460 N.W.2d 355 (Minn. Ct. App. 1990)   Cited 23 times

Holt v. Swenson, 252 Minn. 510, 516, 90 N.W.2d 724, 728 (1958) (citation omitted). Mere silence ordinarily does not amount to an acceptance; however, if the relationship between the parties is such that an offeror is justified in expecting a reply or the offeree is under a duty to respond, silence will be deemed an acceptance. See id. Here, the trial court found a contract between Western and METCO for $205,000. This finding was adequately supported by the record before us.

**** [Gupta v. Morgan Stanley Smith Barney, LLC](https://casetext.com/case/gupta-v-morgan-stanley-smith-barney-llc?q=duty%20to%20respond%20and%20failure%20to%20do%20so%20amounts%20to%20assent&p=1&tab=ps&jxs=&sort=relevance&type=case#pa14)

Case No. 17 C 8375 (N.D. Ill. May. 9, 2018)   Cited 2 times

by applying state contract law. First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 944 (1995). Gupta argues that no arbitration agreement was formed, for two reasons. First, he describes his failure to respond to the September 2 e-mail as silence and argues that silence constitutes assent only if "the offeror has stated or given the offeree reason to understand that assent may be manifested by silence or inaction." Restatement (Second) of Contracts ¶ 69. Gupta contends that Morgan Stanley never gave him such a reason.

**** [Gryc v. Lewis](https://casetext.com/case/gryc-v-lewis?q=duty%20to%20respond%20and%20failure%20to%20do%20so%20amounts%20to%20assent&p=1&tab=ps&jxs=&sort=relevance&type=case#pa75)

410 N.W.2d 888 (Minn. Ct. App. 1987)   Cited 23 times

case, is entitled to due regard in judging the credibility of the witness and will not be second guessed by this court. See Minn.R.Civ.P. 52.01. Ordinarily, mere silence does not amount to an acceptance. However, when the relationship between the parties is such that an offeror is justified in expecting a reply or the offeree is under a duty to respond, silence will be deemed an acceptance. See Holt v. Swenson, 252 Minn. 510, 516, 90 N.W.2d 724, 728 (1958). Here, appellants received the street access they desired but only after respondent had agreed to dedicate land necessary to build the

**** [Concrete v. Beutel](https://casetext.com/case/concrete-v-beutel?q=duty%20to%20respond%20and%20failure%20to%20do%20so%20amounts%20to%20assent&p=1&tab=ps&jxs=&sort=relevance&type=case#pa32)

Nos. A09-1547, A09-1727 (Minn. Ct. App. Jul. 13, 2010)

others. Id. at 892. The defendant property owners did not object to the proposal, and the district court held them liable under an implied-in-fact contract. Id. at 890. We affirmed, reasoning that although mere silence does not constitute acceptance, "when the relationship between the parties is such that an offeror is justified in expecting a reply or the offeree is under a duty to respond, silence will be deemed an acceptance." Id. at 892. Similarly, if Douglas Beutel did not wish to be obligated for the concrete work, he had a duty to object after his discussion with Dawn about the couple's

**** [Cargill Inc. v. Jorgenson Farms](https://casetext.com/case/cargill-inc-v-jorgenson-farms?q=duty%20to%20respond%20and%20failure%20to%20do%20so%20amounts%20to%20assent&p=1&tab=ps&jxs=&sort=relevance&type=case#pa47)

719 N.W.2d 226 (Minn. Ct. App. 2006)   Cited 31 times

silence is sufficient evidence of the formation of a contract to avoid summary judgment. But "[o]rdinarily, mere silence does not amount to an acceptance." Gryc v. Lewis, 410 N.W.2d 888, 892 (Minn.App. 1987). Only "when the relationship between the parties is such that an offeror is justified in expecting a reply or the offeree is under a duty to respond, silence will be deemed an acceptance." Id. Here, both parties denied the existence of an oral agreement, and Cargill has offered no evidence that, given its course of dealing with Jorgenson Farms, silence on the part of Jorgenson Farms was

**** [BLAD v. PARRIS](https://casetext.com/case/blad-v-parris?q=duty%20to%20respond%20and%20failure%20to%20do%20so%20amounts%20to%20assent&p=1&tab=ps&jxs=&sort=relevance&type=case#pa37)

No. A09-908 (Minn. Ct. App. May. 11, 2010)

Co. v. Orville E. Madsen Sons, Inc., 330 N.W.2d 693, 695 (Minn. 1983) (citation omitted). "Ordinarily, mere silence does not amount to an acceptance." Gryc v. Lewis, 410 N.W.2d 888, 892 (Minn. App. 1987). But "when the relationship between the parties is such that an offeror is justified in expecting a reply or the offeree is under a duty to respond, silence will be deemed an acceptance." Id. In a January 2006 letter, respondents requested that appellant notify them of any rent increase for the upcoming year by October 1st of the contract year because land is fertilized in the fall after

**** [Acme Markets v. International Ass'n, Etc.](https://casetext.com/case/acme-markets-v-international-assn-etc?q=duty%20to%20respond%20and%20failure%20to%20do%20so%20amounts%20to%20assent&p=1&tab=ps&jxs=&sort=relevance&type=case#pa77)

506 F. Supp. 92 (E.D. Pa. 1980)   Cited 3 times

finds that Acme did not agree to a return of the work to the Automain as a remedy for breach of the collective bargaining agreement. The Union argues that there was an agreement to that effect by reason of Acme's silence. It is a fundamental legal axiom that, generally, an offeree need not make any reply to an offer and that silence and inaction cannot be construed as an assent. Beach v. United States, 226 U.S. 243, 259, 33 S.Ct. 20, 26, 57 L.Ed. 205 (1912); Baltimore and L. Ry. Co. v. Steel Rail Supply Co., 123 F. 655, 661 (3d Cir. 1903); Dorton v. Collins Aikman Corp., 453 F.2d 1161, 1166

**** [Conocophillips Alaska, Inc. v. Williams Alaska Petroleum, Inc.](https://casetext.com/case/conocophillips-alaska-inc-v-williams-alaska-petroleum-1?q=duty%20to%20respond%20and%20failure%20to%20do%20so%20amounts%20to%20assent&p=1&tab=ps&jxs=&sort=relevance&type=case#pa130)

Supreme Court No. S-14654 (Alaska Mar. 14, 2014)

We have previously held that an offeree's failure to "manifest any objection to the terms" of an offer or to "mak[e] its acceptance of the offer conditional on [the offeror's] assent to different terms" results in the offeror's terms "be[coming] part of the contract." This position is amply supported by persuasive authority in other jurisdictions. It is true that in response to an entire offer, mere silence or inaction generally do not indicate assent. But silence as to one term, coupled with assent to the offer as a whole, cannot defeat inclusion of that term in the resulting contract

**** [Conocophillips Alaska, Inc. v. Williams Alaska Petroleum, Inc.](https://casetext.com/case/conocophillips-alaska-inc-v-williams-alaska-petroleum?q=duty%20to%20respond%20and%20failure%20to%20do%20so%20amounts%20to%20assent&p=1&tab=ps&jxs=&sort=relevance&type=case#pa132)

322 P.3d 114 (Alaska 2014)   Cited 38 times

We have previously held that an offeree's failure to “manifest any objection to the terms” of an offer or to “mak[e] its acceptance of the offer conditional on [the offeror's] assent to different terms” results in the offeror's terms “be [coming] part of the contract.” This position is amply supported by persuasive authority in other jurisdictions. It is true that in response to an entire offer, mere silence or inaction generally do not indicate assent. But silence as to one term, coupled with assent to the offer as a whole, cannot defeat inclusion of that term in the resulting contract

**** [Simmons v. Slavings](https://casetext.com/case/simmons-v-slavings?q=duty%20to%20respond%20and%20failure%20to%20do%20so%20amounts%20to%20assent&p=1&tab=ps&jxs=&sort=relevance&type=case#pa29)

2012 Ohio 538 (Ohio Ct. App. 2012)

aware of the storage fees, nor did he pay her. His belongings were already being stored under conditions that Ms. Simmons described in her testimony as gratuitous, or, if Mr. Slavings' testimony was believed, pursuant to an already existing agreement. This Court has further recognized that "a failure to act may constitute a manifestation of assent." Id. However, there was competent, credible evidence to demonstrate that, despite his repeated efforts to obtain help, Mr. Slavings had no ability to remove his four-wheeler and that the other items did not belong to him. {¶15} If Mr. Slavings'

**** [Hicks v. Macy's Department Stores, Inc.](https://casetext.com/case/hicks-v-macys-department-stores?q=duty%20to%20respond%20and%20failure%20to%20do%20so%20amounts%20to%20assent&p=1&tab=ps&jxs=&sort=relevance&type=case#pa24)

No. C 06-02345 CRB (N.D. Cal. Sep. 11, 2006)   Cited 5 times

agreement is governed by California law. Plaintiff's insistence that he did not agree to arbitrate because he did not sign an arbitration agreement is contrary to that law. While "[a]s a general rule, silence or inaction does not constitute acceptance of an offer," "where circumstances . . . between the parties places the offeree under a duty to act or be bound, his silence or inactivity will constitute his assent."Circuit City Stores, Inc. v. Najd, 294 F.3d 1104, 1109 (9th Cir. 2002); see also Craig v. Brown Root, Inc., 84 Cal.App.4th 416, 420 (2000) (stating that an employee's acceptance

**** [Vogt v. Madden](https://casetext.com/case/vogt-v-madden?q=duty%20to%20respond%20and%20failure%20to%20do%20so%20amounts%20to%20assent&p=1&tab=ps&jxs=&sort=relevance&type=case#bq50)

713 P.2d 442 (Idaho Ct. App. 1986)   Cited 7 times

Silence and inaction may constitute acceptance of an offer to contract, where a party is under a duty to speak or to reject the offer. Such a duty may arise under any one of the following circumstances.

**** [Hansen v. Transworld Wireless TV-Spokane, Inc.](https://casetext.com/case/hansen-v-transworld-wireless-tv-spokane?q=duty%20to%20respond%20and%20failure%20to%20do%20so%20amounts%20to%20assent&p=1&tab=ps&jxs=&sort=relevance&type=case#pa85)

44 P.3d 929 (Wash. Ct. App. 2002)   Cited 14 times

Prot. Dist. No. 12 v. City of Yakima, 122 Wn.2d 371, 388, 858 P.2d 245 (1993). There is no valid contract until an offer is accepted. A.A.B. Elec., Inc. v. Stevenson Pub. Sch. Dist. No. 303, 5 Wn. App. 887, 889, 491 P.2d 684 (1971). "Failure to reject an offer is not equivalent to assent of that contract since silence is acceptance only where there is a duty to speak." Saluteen-Maschersky v. Countrywide Funding Corp., 105 Wn. App. 846, 853, 22 P.3d 804 (2001). If there was an acceptance at all, it was not before April 5, 1999, when Mr. Labont` told Mr. Hansen, "We've approved the deal, it's

**** [Evanston Ins. v. Westchester Surplus Lines Ins. Co.](https://casetext.com/case/evanston-ins-v-westchester-surplus-lines-ins?q=duty%20to%20respond%20and%20failure%20to%20do%20so%20amounts%20to%20assent&p=1&tab=ps&jxs=&sort=relevance&type=case#pa87)

546 F. Supp. 2d 1134 (W.D. Wash. 2008)   Cited 4 times

was never "executed." Plaintiffs also contend that Northwest manifested an intent to be bound by the terms of the subcontract by failing to tell Champion that it rejected the subcontract. This arguments is without merit. "Failure to reject an offer is not equivalent to assent of that contract since silence is acceptance only where there is a duty to speak." Saluteen-Maschersky, 105 Wn. App. at 853. Plaintiffs have shown no duty upon Northwest to speak. The purchase order's invited mode of acceptance was the return of the signed subcontract. (Olson Decl. Ex 14.) Northwest rejected the

**** [Lake v. MTC Fin., Inc.](https://casetext.com/case/lake-v-mtc-fin-inc-1?q=duty%20to%20respond%20and%20failure%20to%20do%20so%20amounts%20to%20assent&p=1&tab=ps&jxs=&sort=relevance&type=case#pa51)

CASE NO. C16-1482JLR (W.D. Wash. Apr. 11, 2017)

Prot. Dist. No. 12 v. City of Yakima, 858 P.2d 245, 256 (Wash. 1993). A contract is not valid until an offer has been accepted. A.A.B. Elec., Inc. v. Stevenson Pub. Sch. Dist. No. 303, 491 P.2d 684, 686 (Wash. Ct. App. 1971). Moreover, "[f]ailure to reject an offer is not equivalent to assent of that contract since silence is acceptance only where there is a duty to speak." Saluteen-Maschersky v. Countrywide Funding Corp., 22 P.3d 804, 808 (Wash. Ct. App. 2001). Finally, "a duty to speak arises only out of a trust or fiduciary relationship between the parties." Lincoln v. Keene, 316 P.2d 899,

**** [Dixie-Portland Flour Co. v. Kelsay-Burns Milling Co.](https://casetext.com/case/dixie-portland-flour-co-v-kelsay-burns-milling-co?q=duty%20to%20respond%20and%20failure%20to%20do%20so%20amounts%20to%20assent&p=1&tab=ps&jxs=&sort=relevance&type=case#pa14)

155 N.E. 526 (Ind. Ct. App. 1927)   Cited 1 times

of this case, are alike in effect. Each of the six instruments of confirmation of purchase and sale, as well as the contract with the hominy company, contains the following: "If this contract is not in accordance with your understanding we must be advised immediately. Failure to do so is understood as acceptance." It appears by the findings that there was no objection at any time to the terms and conditions of such confirmations. It further appears that since August 13, 1923, appellant had known that the Cereal By-Products Company was a firm of brokers who had their main office at St

**** [Smith v. Murray](https://casetext.com/case/smith-v-murray-7?q=duty%20to%20respond%20and%20failure%20to%20do%20so%20amounts%20to%20assent&p=1&tab=ps&jxs=&sort=relevance&type=case#bq71)

311 S.W.2d 591 (Tenn. 1958)   Cited 4 times

resulting in substantial injury is an essential element of the estoppel. It is said that circumstances which will impose a contractual obligation by mere silence are exceptional in their character and of rare occurrence; and no legal liability can arise out of the mere silence of the party sought to be affected, unless he is subject to a duty to reply which is neglected, to the harm of the other party. A mere failure to reject amounts to an acceptance where the offeree has agreed in advance that such silence be so construed or where there was some duty resting upon him to that effect."

**** [Complete Auto Auction v. Automotive Fin.](https://casetext.com/case/complete-auto-auction-v-automotive-fin?q=duty%20to%20respond%20and%20failure%20to%20do%20so%20amounts%20to%20assent&p=1&tab=ps&jxs=&sort=relevance&type=case#pa22)

C.A. No. 18450 (Ohio Ct. App. Jun. 10, 1998)   Cited 3 times

disclosed by the words and conduct of the parties. Rutledge v. Hoffman (1947), 81 Ohio App. 85, 87. Parties manifest their mutual assent either by making a promise or by beginning or rendering performance. Ford v. Tandy Transp., Inc. (1993), 86 Ohio App.3d 364, 380. Silence or a failure to act may constitute a manifestation of assent. Id. See Rutledge v. Hoffman, 81 Ohio App. at 87. CAA presented a witness, Ernest Bozikis, who testified that a swap-out agreement was created and executed. AFC's witnesses testified that they offered CAA a swap-out, but there was never an acceptance. Pursuant to

**** [Lacour v. Marshalls of CA, LLC](https://casetext.com/case/lacour-v-marshalls-of-ca-llc?q=duty%20to%20respond%20and%20failure%20to%20do%20so%20amounts%20to%20assent&p=1&tab=ps&jxs=&sort=relevance&type=case#pa34)

Case No. 20-cv-07641-WHO (N.D. Cal. Apr. 29, 2021)

B. Implicit Consent Generally, under California law, "silence or inaction does not constitute acceptance of an offer" but "where circumstances or the previous course of dealing between the parties places the offeree under a duty to act or be bound, his silence or inactivity will constitute his assent." Circuit City Stores, Inc. v. Najd, 294 F.3d 1104, 1108-09 (9th Cir. 2002). Lacour contends that even if he received the Agreement, he did not sign it and

**** [Fairview Radiology v. Defiance Hospital, Inc.](https://casetext.com/case/fairview-radiology-v-defiance-hospital?q=duty%20to%20respond%20and%20failure%20to%20do%20so%20amounts%20to%20assent&p=1&tab=ps&jxs=&sort=relevance&type=case#pa60)

413 F. Supp. 2d 874 (N.D. Ohio 2005)   Cited 2 times

counteroffer, not an acceptance. Because Fairview never indicated that it accepted this condition, Defiance Hospital argues that no contract was created. This argument fails for two reasons. First, while silence generally is insufficient to constitute acceptance, "[w]here the relationship between the parties justifies an expectation of a reply, however, silence in response to the offer may constitute an acceptance." Nilavar v. Osborn, 137 Ohio App.3d 469, 488 (Ohio Ct.App. 2000) (citing Richard A. Berjian, D.O., Inc. v. Ohio Bell Tel. Co., 54 Ohio St. 2d 147, 152 (1978)). Here, Fairview and Dr

**** [Reitzer v. Medina Valley Irrigation Co.](https://casetext.com/case/reitzer-v-medina-valley-irrigation-co?q=duty%20to%20respond%20and%20failure%20to%20do%20so%20amounts%20to%20assent&p=1&tab=ps&jxs=&sort=relevance&type=case#pa17)

153 S.W. 380 (Tex. Civ. App. 1913)   Cited 4 times

in such cases that the property cannot be reclaimed, and that there only remains to him a right of compensation. The injunction in the present case might have been sought at the first known attempt, or even threat, to despoil the canal, or to construct the railroad upon its line. The omission to do so is an implied assent. The work being completed, the public, as well as those directly interested in the road as stockholders and creditors, have a right to insist on the application of the rule that he who will not speak when he should will not be allowed to speak when he would."

1. [Quinn v. CCS Holding Bus. Tr.](https://casetext.com/case/quinn-v-ccs-holding-bus-tr-1?q=under%20a%20duty%20to%20respond,%20silence%20will%20be%20deemed%20an%20acceptance&p=1&tab=keyword&jxs=&sort=relevance&type=case)

Civil Action No. 19-cv-01417-STV (D. Colo. May. 19, 2020)

("Typically, silence or inaction will be deemed acceptance of an offer only when the relationship between the parties is such that an offeror is justified in expecting a reply or the offeree is under a duty to respond… 22] Plaintiff also provided Defendants with notice that their failure to respond within thirty days would constitute acceptance of the Purchase and Sales Agreement. [#27-3 at 2] Defendants received the

1. [Becker v. One Call, LLC](https://casetext.com/case/becker-v-one-call-llc?q=under%20a%20duty%20to%20respond,%20silence%20will%20be%20deemed%20an%20acceptance&p=1&tab=keyword&jxs=&sort=relevance&type=case)

No. A05-1537 (Minn. Ct. App. Apr. 18, 2006)

offeree is under a duty to respond, silence will be deemed an acceptance." W. Insulation Servs, Inc. v. Cent. Nat'l. Ins. Co. of Omaha, 460 N.W.2d 355, 358 (Minn.App. 1990). There was no duty between appellant respondent that would justify appellant to expect a reply from respondent, and respondent was under no duty to respond. Appellant's argument rests on mere averments. Because there is no genuine issue of material

1. [Frandson v. Oasis Petroleum North America, LLC](https://casetext.com/case/frandson-v-oasis-petroleum-n-am-llc?q=under%20a%20duty%20to%20respond,%20silence%20will%20be%20deemed%20an%20acceptance&p=1&tab=keyword&jxs=&sort=relevance&type=case)

870 F. Supp. 2d 726 (D.N.D. 2012)

counteroffer). (3) Since the law does not normally require a response to an offer, silence will not constitute acceptance, except in exceptional circumstances. See B.J. Kadrmas Inc. v. Oxbow Energy, LLC… it was only a counteroffer to which a response is normally not required and mere silence cannot be deemed acceptance. In addition, the Frandsons argue there are no extraordinary circumstances in this

1. [Haberl v. Bigelow](https://casetext.com/case/haberl-v-bigelow?q=under%20a%20duty%20to%20respond,%20silence%20will%20be%20deemed%20an%20acceptance&p=1&tab=keyword&jxs=&sort=relevance&type=case)

855 P.2d 1368 (Colo. 1993)

**In Haberl, this court considered whether the silence of a holder of a deed of trust securing a promissory note was sufficient to establish his consent to subordinate the instrument to another deed of trust.**

Typically, silence or inaction will be deemed acceptance of an offer only when the relationship between the parties is such that an offeror is justified in expecting a reply or the offeree is under a duty to respond to the increase in his risk for purposes of section 4-3-606(1)(b) of the Code. Haberl was under no duty to respond to Hazouri's general statements. More importantly, at the time of the critical conversation

1. [Miranda v. Arizona](https://casetext.com/case/miranda-v-arizona?q=under%20a%20duty%20to%20respond,%20silence%20will%20be%20deemed%20an%20acceptance&p=1&tab=keyword&jxs=&sort=relevance&type=case)

384 U.S. 436 (1966)

**In Miranda, the Supreme Court established that an accused must be informed of and must waive certain rights before any statement made in custodial interrogation will be deemed voluntarily made under the Fifth Amendment. See, e.g., United States v. Bautista, 145 F.3d 1140 (10th Cir. 1998).**

interrogation will continue until a confession is obtained or that silence in the face of accusation is itself damning and will bode ill when presented to a jury. Further, the warning will show the individual previously thought to be the most satisfactory kind of evidence will now, under this new version of the Fifth Amendment, either not be tried at all or will be acquitted if the State's evidence, minus the confession

1. [Rivera-ColóN v. At&T Mobility Puerto Rico, Inc.](https://casetext.com/case/rivera-colon-v-att-mobility-puerto-rico-inc-1?q=under%20a%20duty%20to%20respond,%20silence%20will%20be%20deemed%20an%20acceptance&p=1&tab=keyword&jxs=&sort=relevance&type=case)

No. 17-2036 (1st Cir. Jan. 16, 2019)

require a heightened standard of acceptance under Puerto Rico law, which can't be met here. AT&T, for its part, says that Puerto Rico law permits silence as an avenue to acceptance of a contract, although it reason is such that a reasonable person would construe silence as necessarily indicating assent, the offeree who keeps silent, knowing that its silence will be misinterpreted, should not be allowed to deny the

1. [In re Teligent, Inc.](https://casetext.com/case/in-re-teligent-inc-6?q=under%20a%20duty%20to%20respond,%20silence%20will%20be%20deemed%20an%20acceptance&p=1&tab=keyword&jxs=&sort=relevance&type=case)

282 B.R. 765 (Bankr. S.D.N.Y. 2002)

**Finding that "[t]he debtors could not . . . satisfy § 1129 . . . except to the extent that a particular administrative creditor agreed to a different treatment."**

variation of the more general principle of estoppel through silence. An offeree's silence will be deemed to be an acceptance when he has a duty to speak. See, e.g. Hughes v. John Hancock Mut. Life Ins. Co… his hands, should be under an obligation to speak up. This does not mean that he must accept the debtor's offer to take less, but only that he must respond to it. Otherwise, his silence could defeat the plan

1. [BLAD v. PARRIS](https://casetext.com/case/blad-v-parris?q=under%20a%20duty%20to%20respond,%20silence%20will%20be%20deemed%20an%20acceptance&p=1&tab=keyword&jxs=&sort=relevance&type=case)

No. A09-908 (Minn. Ct. App. May. 11, 2010)

such that an offeror is justified in expecting a reply or the offeree is under a duty to respond, silence will be deemed an acceptance." Id. In a January 2006 letter, respondents requested that appellant notify the latter's silence will be regarded as an acceptance" and finding acceptance by conduct when party allowed other party to perform contract without objection).

[BLAD v. PARRIS](https://casetext.com/case/blad-v-parris?q=under%20a%20duty%20to%20respond,%20silence%20will%20be%20deemed%20an%20acceptance&p=2&tab=keyword&jxs=&sort=relevance&type=case)

No. A09-908 (Minn. Ct. App. May. 11, 2010)

such that an offeror is justified in expecting a reply or the offeree is under a duty to respond, silence will be deemed an acceptance." Id. In a January 2006 letter, respondents requested that appellant notify… the latter's silence will be regarded as an acceptance" and finding acceptance by conduct when party allowed other party to perform contract without objection).

[Moree v. Wells Fargo Bank](https://casetext.com/case/moree-v-wells-fargo-bank-2?q=under%20a%20duty%20to%20respond,%20silence%20will%20be%20deemed%20an%20acceptance&p=2&tab=keyword&jxs=&sort=relevance&type=case)

CIVIL ACTION 19-0194-WS-M (S.D. Ala. Jun. 7, 2019)

[In re Capitol Hill Group](https://casetext.com/case/in-re-capitol-hill-group-3?q=under%20a%20duty%20to%20respond,%20silence%20will%20be%20deemed%20an%20acceptance&p=2&tab=keyword&jxs=&sort=relevance&type=case)

313 B.R. 344 (D.D.C. 2004)

**Rejecting CHG's equitable breach of fiduciary duty/breach of professional conduct argument**

"explicit statement by the offeree . . . may give the offeror reason to understand that silence will constitute acceptance". Id. at cmt. d. The facts in this case parallel the language of the restatement. As informed Shaw Pittman that it rejected its offer, CHG's silence under its own terms and applicable District of Columbia law constitutes acceptance. FOURTH ISSUE ON APPEAL CHG argues that a reasonable jury

[LaSalle Bank Lake View v. Seguban](https://casetext.com/case/lasalle-bank-lake-view-v-seguban-2?q=under%20a%20duty%20to%20respond,%20silence%20will%20be%20deemed%20an%20acceptance&p=2&tab=keyword&jxs=&sort=relevance&type=case)

54 F.3d 387 (7th Cir. 1995)

**Finding that such an adverse inference drawn from Fifth Amendment silence in civil proceedings does not impose an unconstitutional cost on the exercise of the privilege**

prohibited by National Acceptance. Baxter's concern, after all (as is clear not only from Baxter but from Cunningham and National Acceptance as well), is that the defendant's silence be weighed in light of supplemental state law claims for breach of fiduciary duty, conversion, and fraud. The Bank charged Rafael with participating in a conspiracy to violate RICO under 18 U.S.C. § 1962(d). In addition to this civil

[Friedman v. Schwartz](https://casetext.com/case/friedman-v-schwartz-4?q=under%20a%20duty%20to%20respond,%20silence%20will%20be%20deemed%20an%20acceptance&p=2&tab=keyword&jxs=&sort=relevance&type=case)

CV 08-2801 (WDW) (E.D.N.Y. Dec. 16, 2011)

404 (1942). Additionally, "a party's silence will be deemed an acquiescence where he or she is under such a duty to speak that his or her conduct, accompanied by silence, would be deceptive and beguiling (internal quotation omitted). "Such a duty may be created by a course of conduct . . . which gives the offeror reason to understand that silence will constitute acceptance." Id. The court finds that Plaintiff

[Federal Trade Commission v. Consumer Alliance, Inc.](https://casetext.com/case/federal-trade-commission-v-consumer-alliance?q=under%20a%20duty%20to%20respond,%20silence%20will%20be%20deemed%20an%20acceptance&p=2&tab=keyword&jxs=&sort=relevance&type=case)

02 C 2429 (N.D. Ill. Sep. 29, 2003)

Ontario, and Steven Winter failed to respond to the FTC's statement of facts, therefore, pursuant to LR 56.1(b)(3)(B), all facts put forth by the FTC in its statement are deemed admitted as to these de Pendants… a citation to these requests are deemed admitted as to defendant Biosource, See United States v. Kasuboski, 834 F.2d 1345, 1350 (7th Cir. 1987) ("Admissions made under Rule 36, even default admissions

[Cargill Inc. v. Jorgenson Farms](https://casetext.com/case/cargill-inc-v-jorgenson-farms?q=under%20a%20duty%20to%20respond,%20silence%20will%20be%20deemed%20an%20acceptance&p=2&tab=keyword&jxs=&sort=relevance&type=case)

719 N.W.2d 226 (Minn. Ct. App. 2006)

* [Motion for summary judgment](https://casetext.com/search?q=under%20a%20duty%20to%20respond,%20silence%20will%20be%20deemed%20an%20acceptance&p=1&tab=keyword&jxs=&sort=relevance&type=case&motionTypes=msj)

**Stating that silence ordinarily does not amount to acceptance of a contract offer, particularly if the offer is a written contract that expressly requires a signature**

such that an offeror is justified in expecting a reply or the offeree is under a duty to respond, silence will be deemed an acceptance." Id. Here, both parties denied the existence of an oral agreement, and not sign or return the contract; thus, under the express terms of the document, no contract was formed. The crux of Cargill's argument is that Jorgenson's silence is sufficient evidence of the formation

[E a v. Music Cty Rcrd.](https://casetext.com/case/e-a-v-music-cty-rcrd?q=under%20a%20duty%20to%20respond,%20silence%20will%20be%20deemed%20an%20acceptance&p=2&tab=keyword&jxs=&sort=relevance&type=case)

No. M2005-01207-COA-R3-CV (Tenn. Ct. App. Mar. 21, 2007)

intend it to do so. . . . An offeror cannot, merely by saying that the offeree's silence will be taken as an acceptance cause it to be operative as such." Arthur Linton Corbin, 1 CORBIN ON CONTRACTS, §… Music City to construe inaction by E A as acceptance of the contract modification it proposed. However, under general contract law, a party is under no duty to respond to an unsolicited offer, and a contract

[Craddock v. LeClair Ryan, P.C.](https://casetext.com/case/craddock-v-leclair-ryan-pc?q=under%20a%20duty%20to%20respond,%20silence%20will%20be%20deemed%20an%20acceptance&p=2&tab=keyword&jxs=&sort=relevance&type=case)

Civil Action No. 3:16-cv-11 (E.D. Va. Apr. 12, 2016)

**In Craddock, the Eastern District of Virginia rejected the plaintiff's argument that she was not bound to an arbitration provision because she did not sign it.**

the offeree [or] usage of trade ... may give the offeror reason to understand that silence will constitute acceptance." Restatement (Second) of Contracts § 69 (comment (d)). Craddock's October 2012 request… of acceptance, without excluding acceptance in any other manner reasonable under the circumstances. B. Craddock's Conduct Between January 1, 2013 and November 24, 2014 Reasonably Evinced Acceptance Of

[Hughes v. John Hancock Mutual Life Ins. Co.](https://casetext.com/case/hughes-v-john-hancock-mutual-life-ins-co?q=under%20a%20duty%20to%20respond,%20silence%20will%20be%20deemed%20an%20acceptance&p=2&tab=keyword&jxs=&sort=relevance&type=case)

163 Misc. 31 (N.Y. Mun. Ct. 1937)   Cited 9 times

Co., supra.) When a party is under a duty to speak, or when his failure to speak is inconsistent with honest dealings and misleads another, then his silence may be deemed to be acquiescence. If the defendant… peculiar under which an acceptance may be inferred from silence merely. In such cases, silence can operate ordinarily as an acceptance only by way of estoppel, and to raise an estoppel from silence there…

[Horton v. DaimlerChrysler](https://casetext.com/case/horton-v-daimlerchrysler?q=finding%20acceptance%20may%20be%20proved%20%20by%20conduct&p=1&tab=ps&jxs=&sort=relevance&type=case#pa42)

262 S.W.3d 1 (Tex. App. 2008)   Cited 12 times

is inconsequential so long as it effectively makes known to the offeror that his offer has been accepted." Fujimoto v. Rio Grande Pickle Co., 414 F.2d 648, 652 (5th Cir. 1969); Embree, Inc. v. Sw. Bell Media, Inc., 772 S.W.2d 209, 211 (Tex.App.-Dallas 1989, writ denied). It is well established that acceptance may be shown by conduct. Patrick v. Smith, 90 Tex. 267, 38 S.W. 17, 19 (1896); In re Citgo Petroleum Corp., 248 S.W.3d 769, 774 (Tex.App.-Beaumont 2008, no pet.); see RESTATEMENT (SECOND) OF CONTRACTS § 50 (1981). Horton's act in tendering the first installment of $500.00 was a clear,

**** [The Woodlands v. Weibust](https://casetext.com/case/the-woodlands-v-weibust?q=finding%20acceptance%20may%20be%20proved%20%20by%20conduct&p=1&tab=ps&jxs=&sort=relevance&type=case#pa15)

No. 09-10-00010-CV (Tex. App. Oct. 7, 2010)

agreement on April 25, 2008, the school, in effect, extended the deadline in writing, and Weibust effectively expressed her consent to it by her execution of the contract that same day. Also, Weibust taught school at The Woodlands Christian Academy during the 2008-09 school year. Acceptance of an offer to contract "may be shown by conduct." Horton v. DaimlerChrysler Fin. Servs. Americas, L.L.C., 262 S.W.3d 1, 6 (Tex. App.-Texarkana 2008, no pet.); see also In re Halliburton Co., 80 S.W.3d 566, 569 (Tex. 2002) (orig. proceeding) (holding arbitration clause was accepted by continued employment)

**** [Mohr v. Shultz](https://casetext.com/case/mohr-v-shultz?q=finding%20acceptance%20may%20be%20proved%20%20by%20conduct&p=1&tab=ps&jxs=&sort=relevance&type=case#bq45)

388 P.2d 1002 (Idaho 1964)   Cited 18 times

"Acceptance of goods may be shown by words or conduct. It must show the buyer's assent to become owner of identified goods offered by the seller. Keeping delivered goods more than a reasonable time without notice of rejection can itself be a tacit showing of acceptance."

**** [Forged Components, Inc. v. Guzman](https://casetext.com/case/forged-components?q=finding%20acceptance%20may%20be%20proved%20%20by%20conduct&p=1&tab=ps&jxs=&sort=relevance&type=case#pa51)

NO. 01-11-00563-CV (Tex. App. Jun. 25, 2013)

pet.) (citing RESTATEMENT (SECOND) OF CONTRACTS § 30 (1981)). The mode of expressing assent is inconsequential as long as it effectively makes known to the offeror that his offer has been accepted. Id. (citing Fujimoto v. Rio Grande Pickle Co., 414 F.2d 648, 652 (5th Cir. 1969). A party may show acceptance through conduct. Id. In response to FCI's contention that Guzman's counsel's addition of the handwritten note qualified a material term of FCI's offer and, thus, constituted a rejection and counteroffer, Guzman argues that the handwritten note merely clarified, but did not materially alter,

**** [Forged Components, Inc. v. Guzman](https://casetext.com/case/forged-components-1?q=finding%20acceptance%20may%20be%20proved%20%20by%20conduct&p=1&tab=ps&jxs=&sort=relevance&type=case#pa46)

409 S.W.3d 91 (Tex. App. 2013)   Cited 21 times

no pet.) ( citingRestatement (Second)ofContracts § 30 (1981)). The mode of expressing assent is inconsequential as long as it effectively makes known to the offeror that his offer has been accepted. Id. (citing Fujimoto v. Rio Grande Pickle Co., 414 F.2d 648, 652 (5th Cir.1969)). A party may show acceptance through conduct. Id. In response to FCI's contention that Guzman's counsel's addition of the handwritten note qualified a material term of FCI's offer and, thus, constituted a rejection and counteroffer, Guzman argues that the handwritten note merely clarified, but did not materially alter,

**** [Yaldo v. Toyota Motor Sales USA, Inc.](https://casetext.com/case/yaldo-v-toyota-motor-sales-usa?q=finding%20acceptance%20may%20be%20proved%20%20by%20conduct&p=1&tab=ps&jxs=&sort=relevance&type=case#bq28)

No. 308600 (Mich. Ct. App. Jan. 2, 2014)

The Court finds that the parties formed a valid and enforceable agreement to resolve Plaintiff's claim pursuant to the August 19, 2009 offer and acceptance and Defendant's conduct after receiving the acceptance. Acceptance may be shown by any act or conduct clearly evincing an intention to accept the offer. Ludowici-Celadon v McKinely, 307 Mich 149 (1943). Defendant's request for documents and the issuing of the check clearly evince its intention to accept the

**** [Gordon v. Dailey](https://casetext.com/case/gordon-v-zachary-dailey-lab-rat-data-processing-llc-2?q=finding%20acceptance%20may%20be%20proved%20%20by%20conduct&p=1&tab=ps&jxs=&sort=relevance&type=case#pa54)

Civil Action No. 14-7495 (D.N.J. Mar. 27, 2018)

thereto. See Sec. Am. Compl., ¶¶ 231-241 and 315-325. In large measure, Plaintiff points to the fact that his actions solidified acceptance of the offer. An enforceable contract may occur where once party communicates an offer and another party demonstrates acceptance. Importantly, acceptance may be shown by words or conduct. See, e.g., Weichert Co. Realtors v. Ryan, 128 N.J. 427, 435 (1992)("An offeree may manifest assent to the terms of an offer through words, creating an express contract, or by conduct, creating a contract implied-in-fact"); West Caldwell v. Caldwell, 26 N.J. 9, 24

**** [Allied Steel and Conveyors, Inc. v. Ford Motor](https://casetext.com/case/allied-steel-and-conveyors-inc-v-ford-motor?q=finding%20acceptance%20may%20be%20proved%20%20by%20conduct&p=1&tab=ps&jxs=&sort=relevance&type=case#bq38)

277 F.2d 907 (6th Cir. 1960)   Cited 41 times

"The contract consists of the offer and its acceptance. The acceptance may be shown by any act or conduct clearly evincing an intention to accept the offer made. \* \* \* The delivery of the merchandise ordered clearly evinces the intention to accept. In Maine v. Howell, 7 Ga. App. 311, 66 S.E. 804, it is said: `This was the very highest form of acceptance.'"

**** [Weldon v. Hodge](https://casetext.com/case/weldon-v-hodge?q=finding%20acceptance%20may%20be%20proved%20%20by%20conduct&p=1&tab=ps&jxs=&sort=relevance&type=case#pa28)

CIVIL ACTION NO. 3:16-7887 (S.D.W. Va. Sep. 27, 2017)

in accordance with one of the terms of the settlement reflects that she appreciated that an agreement existed and that the parties had made mutual promises. Applying general principals of contract law strengthens the showing that Plaintiff agreed to the settlement terms. Acceptance of an offer can be shown by word, act, or conduct. See New v. GameStop, Inc., 753 S.E.2d 62, 70-71 (W. Va. 2013). Plaintiff's acknowledgment that the WVDOC had an obligation to expunge an infraction demonstrates conducts consistent with the acceptance of the settlement agreement. See Bailey v. Sewell Coal Co., 437

**** [Terlizzi v. Altitude Mktg., Inc.](https://casetext.com/case/terlizzi-v-altitude-mktg-inc?q=finding%20acceptance%20may%20be%20proved%20%20by%20conduct&p=1&tab=ps&jxs=&sort=relevance&type=case#pa71)

Civil Action No. 16-cv-1712-WJM-STV (D. Colo. May. 14, 2018)   Cited 2 times

Colorado Law In Colorado, whether the parties entered into a contract is a fact question. I.M.A., Inc. v. Rocky Mountain Airways, Inc., 713 P.2d 882, 887 (Colo. 1986). "[A] contract is formed when an offer is accepted." Scoular Co. v. Denney, 151 P.3d 615, 617 (Colo. App. 2006). Acceptance may be shown "by act or conduct." Linder v. Midland Oil Ref. Co., 40 P.2d 253, 254 (Colo. 1935); see also Restatement (Second) of Contracts § 19(1) ("The manifestation of assent may be made wholly or partly by written or spoken words or by other acts or by failure to act."), cited with approval in Haberl v

**** [Manfre v. Sharp](https://casetext.com/case/manfre-v-sharp?q=finding%20acceptance%20may%20be%20proved%20%20by%20conduct&p=1&tab=ps&jxs=&sort=relevance&type=case#pa11)

210 Cal. 479 (Cal. 1930)   Cited 15 times

be interpreted as an offer on the part of Voight to release himself and substitute the plaintiff in his place. This was the conclusion of the trial court. The only remaining question is whether the defendant accepted this offer. [3] This acceptance may be shown to have been made by acts as well as by words. That is, the acceptance may be inferred from conduct. In the case of Leary v. United States, 224 U.S. 567 [Ann. Cas. 1913d 1029, 56 L.Ed. 889, 32 Sup. Ct. Rep. 599, see, also, Rose's U.S. Notes], the court found it necessary to determine, before it could grant relief, whether or not an

**** [Lloyd v. Transunion, LLC](https://casetext.com/case/lloyd-v-transunion-llc?q=finding%20acceptance%20may%20be%20proved%20%20by%20conduct&p=1&tab=ps&jxs=&sort=relevance&type=case#pa32)

Case No. 19-00236-CV-W-ODS (W.D. Mo. Feb. 26, 2020)

in Baier, Plaintiff offers no evidence that Defendant did not intend to be bound by the Agreement. Moreover, a party's signature is not the exclusive method of demonstrating agreement. Id. at 738 (quoting Morrow v. Hallmark Cards, Inc., 273 S.W.3d 15, 22-23 (Mo. Ct. App. 2008)). Acceptance can also be demonstrated by conduct. Id. In this matter, the Agreement is more analogous to Coleman v. Bristol Care, Inc., in which the defendant did not sign the arbitration agreement, yet the court held, "[T]he conduct of the employer unambiguously indicated its intent to be bound by the terms of the

**** [Coleman v. Bristol Care, Inc.](https://casetext.com/case/coleman-v-bristol-care-inc?q=finding%20acceptance%20may%20be%20proved%20%20by%20conduct&p=1&tab=ps&jxs=&sort=relevance&type=case#pa20)

Case No. 6:18-cv-04069-MDH (W.D. Mo. Jul. 13, 2018)

of acceptance. Id. at 741. Here, we are similarly confronted by the absence of an employer's signature on a contract. However, a party's signature is not the exclusive method of demonstrating agreement. Morrow v. Hallmark Cards, Inc., 273 S.W.3d 15, 22-23 (Mo. App. W.D. 2008). Acceptance can also be demonstrated by conduct. Heritage Roofing, LLC v. Fisher, 164 S.W.3d 128, 134 (Mo.App.E.D. 2005) (internal citations omitted). In this situation, unlike in Baier, the conduct of the employer unambiguously indicated its intent to be bound by the terms of the contract. Crucially, in this case, there

**** [Hickerson v. Pool Corp.](https://casetext.com/case/hickerson-v-pool-corp?q=finding%20acceptance%20may%20be%20proved%20%20by%20conduct&p=1&tab=ps&jxs=&sort=relevance&type=case#pa50)

Civil Action No. 19-cv-02229-CMA-STV (D. Colo. Aug. 25, 2020)   Cited 1 times

the standard elements of offer, acceptance, and consideration for the formation of a valid contract." Hill v. Alstom Power, Inc., No. 3:13-CV-00496-JAG, 2013 WL 6408416, at \*2 (E.D. Va. Dec. 6, 2013); Montagna v. Holiday Inns, Inc., 269 S.E.2d 838, 844 (Va. 1980) (same). Acceptance "may be inferred from the acts and conduct of the parties." Durham v. Nat'l Pool Equip. Co. of Va., 138 S.E.2d 55, 58 (Va. 1964); In re Frye, 216 B.R. 166, 171 (E.D. Va. 1997) (holding that a party may convey his acceptance of a contract to another party "in a variety of ways so long as the actions or conduct can be

**** [Bottum v. Jundt](https://casetext.com/case/bottum-v-jundt-1?q=finding%20acceptance%20may%20be%20proved%20%20by%20conduct&p=1&tab=ps&jxs=&sort=relevance&type=case#pa35)

No. A09-797 (Minn. Ct. App. Dec. 29, 2009)   Cited 1 times

a new house with the anticipated bonus payment. JAI argues that there is no evidence that Bottum accepted an offer to delay payment. JAI supports this assertion with the fact that Bottum never testified that he agreed to wait until the issuance of the divorce decree. But as noted above, acceptance can be inferred from conduct. And Bottum's conduct — not filing a lawsuit and taking steps to begin construction of a new home — demonstrated acceptance. See id. ("[A] party's intention . . . to accept an offer made to him, may be inferred from his words and conduct."). JAI also contends that

**** [L&T Fashion, Inc. v. Best Items Int'l, Inc.](https://casetext.com/case/lt-fashion-inc-v-best-items-intl-inc?q=finding%20acceptance%20may%20be%20proved%20%20by%20conduct&p=1&tab=ps&jxs=&sort=relevance&type=case#bq23)

Civil Action No. 15-cv-4039 (PGS) (D.N.J. Feb. 15, 2019)

An acceptance occurs when a party shows intent to agree to an offer. The acceptance may be made by words or conduct. It must be made before the offer is withdrawn or lapses, and it must match the terms of the offer exactly. A proposal to accept an offer on any different terms is not an acceptance of the original offer. If any new or different terms are proposed in response to the offer,

**** [Gordon v. Dailey](https://casetext.com/case/gordon-v-zachary-dailey-lab-rat-data-processing-llc-2?q=finding%20acceptance%20may%20be%20proved%20%20by%20conduct&p=1&tab=ps&jxs=&sort=relevance&type=case#bq56)

Civil Action No. 14-7495 (D.N.J. Mar. 27, 2018)

An acceptance occurs when a party shows intent to agree to an offer. The acceptance may be made by words or conduct. It must be made before the offer is withdrawn or lapses, and it must match the terms of the offer exactly. A proposal to accept an offer on any different terms is not an acceptance of the original offer. If any new or different terms are proposed in response to the offer,

**** [Senior Settlements, LLC v. Growth Trust Fund](https://casetext.com/case/senior-settlements-llc-v-growth-trust-fund-dnj-2-27-2008?q=finding%20acceptance%20may%20be%20proved%20%20by%20conduct&p=1&tab=ps&jxs=&sort=relevance&type=case#bq50)

Civil No. 05-777 (JBS) (D.N.J. Feb. 27, 2008)   Cited 3 times

An acceptance occurs when a party shows intent to agree to an offer. The acceptance may be made by words or conduct. It must be made before the offer is withdrawn or lapses, and it must match the terms of the offer exactly. A proposal to accept an offer on any different terms is not an acceptance of the original offer. If any new or different terms are proposed in response to the offer,

**** [Fire Ass'n. of Phila. v. Allis Chalmers Mfg. Co.](https://casetext.com/case/fire-assn-of-phila-v-allis-chalmers-mfg-co?q=finding%20acceptance%20may%20be%20proved%20%20by%20conduct&p=1&tab=ps&jxs=&sort=relevance&type=case#bq119)

129 F. Supp. 335 (N.D. Iowa 1955)   Cited 28 times

"Acceptance of a contract may be proven by facts or circumstances, or by expressed words of acceptance. It may be shown by proving acts done, on the faith of the order, such as indicate an acceptance of the terms of the order. This may be shown by the shipment of the goods ordered. There is no evidence in this record that the defendants, after signing and delivering to the plaintiff the order in question, ever rescinded, or attempted to rescind, or cancel the orders. \* \* \*"

**** [Rutkoski v. Evolv Health, LLC](https://casetext.com/case/rutkoski-v-evolv-health-llc-2?q=finding%20acceptance%20may%20be%20proved%20%20by%20conduct&p=1&tab=ps&jxs=&sort=relevance&type=case#pa54)

No. 05-17-00088-CV (Tex. App. Mar. 4, 2019)   Cited 1 times

There is also evidence of acceptance by conduct. For example, as to all of Gonzalez's conduct as an employee, Evolv argues the evidence indicates he performed pursuant to the signed contract in the files of EvolvHealth Mexico. Conversely, appellants argue such conduct is consistent with Gonzalez considering the offer

**** [Greenwood Land Co. v. Omnicare, Inc.](https://casetext.com/case/greenwood-land-co-v-omnicare?q=finding%20acceptance%20may%20be%20proved%20%20by%20conduct&p=1&tab=ps&jxs=&sort=relevance&type=case#pa35)

2:09cv686 (W.D. Pa. May. 23, 2014)

141 A. 640, 642 (Pa. 1928). Such assent can be established through either an express agreement or an unequivocal act of the parties implying that they have agreed to effectuate a surrender and acceptance. Id. (citing Felker v. Richardson, 32 A. 830, 831 (N.H. 1894)). An acceptance also can be established "by implication of law." Id. To show such an implicit acceptance, there must be evidence of acts so inconsistent with the terms of the lease that the landlord and tenant relationship can no longer be said to exist in a manner that would permit enforcement of the rights and duties under the

**** [Alexander Const. Co. v. C H Contracting](https://casetext.com/case/alexander-const-co-v-c-h-contracting?q=finding%20acceptance%20may%20be%20proved%20%20by%20conduct&p=1&tab=ps&jxs=&sort=relevance&type=case#pa29)

354 N.W.2d 535 (Minn. Ct. App. 1984)   Cited 7 times

However, even if we accept January 1981 as the completion date, the affidavits do not raise a material issue of fact. Neither affidavit offers any evidence to show the trial court erred in finding that the project was not formally accepted until October 15, 1981. They merely suggest that completion and use should be equated with acceptance. It is true that acceptance may be expressed by words or conduct. Guaranteed Gravel Sand Co. v. Aetna Casualty Surety Co., 174 Minn. 366, 371, 219 N.W. 546, 548 (1928). However, that conduct must be sufficient to fix the time of acceptance with certainty:

**** [Title Trust Co. v. Nelson](https://casetext.com/case/title-trust-co-v-nelson?q=finding%20acceptance%20may%20be%20proved%20%20by%20conduct&p=1&tab=ps&jxs=&sort=relevance&type=case#pa31)

71 P.2d 1081 (Or. 1937)   Cited 10 times

or reciprocity. The purpose of a signature to an agreement, such as the one involved here, is to evidence or express assent to and acceptance of the terms of the instrument. Signing, however, is not the only method of assenting to or accepting the terms of such an agreement. There may be acceptance by act or conduct. This principle is stated in 13 C.J. 275, § 73, as follows: "An acceptance of an offer may be by act, as where an offer is made that the offerer will pay or do something else, if the offeree shall do a particular thing. In such a case performance is the only thing needful to