§ 5-701. Agreements required to be in writing. a. Every agreement, promise or undertaking is void, unless it or some note or memorandum thereof be in writing, and subscribed by the party to be charged therewith, or by his lawful agent, if such agreement, promise or undertaking:

1. By its terms is not to be performed within one year from the making thereof or the performance of which is not to be completed before the end of a lifetime;

2. Is a special promise to answer for the debt, default or miscarriage of another person;

3. Is made in consideration of marriage, except mutual promises to marry;

5. Is a subsequent or new promise to pay a debt discharged in bankruptcy;

6. Notwithstanding section 2-201 of the uniform commercial code, if the goods be sold at public auction, and the auctioneer at the time of the sale, enters in a sale book, a memorandum specifying the nature and price of the property sold, the terms of the sale, the name of the purchaser, and the name of the person on whose account the sale was made, such memorandum is equivalent in effect to a note of the contract or sale, subscribed by the party to be charged therewith;

9. Is a contract to assign or an assignment, with or without consideration to the promisor, of a life or health or accident insurance policy, or a promise, with or without consideration to the promisor, to name a beneficiary of any such policy. This provision shall not apply to a policy of industrial life or health or accident insurance.

10. Is a contract to pay compensation for services rendered in negotiating a loan, or in negotiating the purchase, sale, exchange, renting or leasing of any real estate or interest therein, or of a business opportunity, business, its good will, inventory, fixtures or an

interest therein, including a majority of the voting stock interest in a corporation and including the creating of a partnership interest. "Negotiating" includes procuring an introduction to a party to the transaction or assisting in the negotiation or consummation of the transaction. This provision shall apply to a contract implied in fact or in law to pay reasonable compensation but shall not apply to a contract to pay compensation to an auctioneer, an attorney at law, or a duly licensed real estate broker or real estate salesman.

b. Notwithstanding paragraph one of subdivision a of this section:

1. An agreement, promise, undertaking or contract, which is valid in other respects and is otherwise enforceable, is not void for lack of a note, memorandum or other writing and is enforceable by way of action or defense provided that such agreement, promise, undertaking or contract is a qualified financial contract as defined in paragraph two of this subdivision and (a) there is, as provided in paragraph three of this subdivision, sufficient evidence to indicate that a contract has been made, or (b) the parties thereto, by means of a prior or subsequent written contract, have agreed to be bound by the terms of such qualified financial contract from the time they reach agreement (by telephone, by exchange of electronic messages, or otherwise) on those terms.

2. For purposes of this subdivision, a "qualified financial contract" means an agreement as to which each party thereto is other than a natural person and which is:

(a) for the purchase and sale of foreign exchange, foreign currency, bullion, coin or precious metals on a forward, spot, next-day value or other basis;

(b) a contract (other than a contract for the purchase and sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade) for the purchase, sale or transfer of any commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or any product or byproduct thereof, with a maturity date more than two days after the date the contract is entered into;

(c) for the purchase and sale of currency, or interbank deposits denominated in United States dollars;

(d) for a currency option, currency swap or cross-currency rate swap;

(e) for a commodity swap or a commodity option (other than an option contract traded on, or subject to the rules of a contract market or board of trade);

(f) for a rate swap, basis swap, forward rate transaction, or an interest rate option;

(g) for a security-index swap or option or a security (or securities) price swap or option;

(h) an agreement which involves any other similar transaction relating to a price or index (including, without limitation, any transaction or agreement involving any combination of the foregoing, any cap, floor, collar or similar transaction with respect to a rate, commodity price, commodity index, security (or securities) price, security-index or other price index);

(i) for the assignment, sale, trade, participation or exchange of indebtedness or claims relating thereto arising in the course of the claimant's business or profession (including but not limited to commercial and/or bank loans, choses in action arising under or in connection with loan agreements and private notes, and including forward sales), but only to the extent that such indebtedness or obligation was not incurred by a natural person primarily for personal, family or household purposes; or

(j) an option with respect to any of the foregoing.

3. There is sufficient evidence that a contract has been made if:

(a) There is evidence of electronic communication (including, without limitation, the recording of a telephone call or the tangible written text produced by computer retrieval), admissible in evidence under the laws of this state, sufficient to indicate that in such communication a contract was made between the parties;

(b) A confirmation in writing sufficient to indicate that a contract has been made between the parties and sufficient against the sender is received by the party against whom enforcement is sought no later than the fifth business day after such contract is made (or such other period of time as the parties may agree in writing) and the sender does not

receive, on or before the third business day after such receipt (or such other period of time as the parties may agree in writing), written objection to a material term of the confirmation; for purposes of this subparagraph, a confirmation or an objection thereto is received at the time there has been actual receipt by an individual responsible for the transaction or, if earlier, at the time there has been constructive receipt which is the time actual receipt by such an individual would have occurred if the receiving party, as an organization, has exercised reasonable diligence; and a "business day" for the purposes of this subparagraph is a day on which both parties are open and transacting business of the kind involved in that qualified financial contract which is the subject of the confirmation;

(c) The party against whom enforcement is sought admits in its pleading, testimony or otherwise in court that a contract was made; or

(d) There is a note, memorandum or other writing sufficient to indicate that a contract has been made, signed by the party against whom enforcement is sought or by its authorized agent or broker.

For purposes of this paragraph evidence of an electronic communication indicating the making therein of a contract or a confirmation, admission, note, memorandum or writing is not insufficient because it omits or incorrectly states one or more material terms agreed upon, so long as such evidence provides a reasonable basis for concluding that a contract was made.

4. For purposes of this subdivision, the tangible written text produced by telex, telefacsimile, computer retrieval or other process by which electronic signals are transmitted by telephone or otherwise shall constitute a writing and any symbol executed or adopted by a party with the present intention to authenticate a writing shall constitute a signing. The confirmation and notice of objection referred to in subparagraph (b) of paragraph three of this subdivision may be communicated by means of telex, telefacsimile, computer or other similar process by which electronic signals are transmitted by telephone or otherwise, provided that a party claiming to have communicated in such a manner shall, unless the parties have otherwise agreed in writing, have the burden of establishing actual or constructive receipt by the other

party as set forth in subparagraph (b) of paragraph three of this subdivision.