

## **CHAPTER 3-02**

### **PRINCIPAL AND AGENT RELATION**

#### **3-02-01. Acts done by or to agent.**

Every act which legally may be done by or to any person may be done by or to the agent of such person for that purpose, unless a contrary intention clearly appears.

#### **3-02-02. Actual or ostensible authority.**

An agent has such authority as the principal actually or ostensibly confers upon the agent. Actual authority is such as a principal intentionally confers upon the agent or intentionally or by want of ordinary care allows the agent to believe the agent possesses. Ostensible authority is such as the principal intentionally or by want of ordinary care causes or allows a third person to believe the agent possesses.

#### **3-02-03. Agent authority.**

Every agent has actually such authority as is defined by this title unless specially deprived thereof by the agent's principal, and has even then such authority ostensibly, except as to persons who have actual or constructive notice of the restriction upon the agent's authority.

#### **3-02-04. Authority limited to specific terms.**

When an authority is given partly in general and partly in specific terms, the general authority gives no higher powers than those specifically mentioned.

#### **3-02-05. General authority limited.**

An authority expressed in general terms, however broad, does not authorize an agent to act in the agent's own name unless doing so is the usual course of business, to define the scope of the agent's agency, or to do any act that a trustee is forbidden to do under chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19.

#### **3-02-06. Form of authorization.**

An oral authorization is sufficient for any purpose, except that an authority to enter into a contract required by law to be in writing, other than an instrument covered by chapter 41-03 can be given only by an instrument in writing.

#### **3-02-07. Fraud limits authority.**

An agent never can have authority, either actual or ostensible, to do an act which is, and is known or suspected by the person with whom the agent deals to be, a fraud upon the principal.

#### **3-02-08. Authority to do necessary acts and make representations.**

An agent has authority:

1. To do everything necessary or proper and usual in the ordinary course of business to effect the purpose of the agent's agency.
2. To make a representation respecting any matter of fact, not including the terms of the agent's authority, but upon which the agent's right to use the agent's authority depends and the truth of which cannot be determined by the use of reasonable diligence on the part of the person to whom the representation is made.

#### **3-02-09. When agent may disobey instructions.**

An agent has power to disobey instructions in dealing with the subject of the agency in cases when it is clearly for the interest of the agent's principal that the agent should do so and there is not time to communicate with the principal.

**3-02-10. Authority to warrant property sold.**

Authority to sell and convey real property includes authority to give the usual covenants of warranty. Authority to sell personal property includes authority to warrant the title of the principal and the quality and quantity of the property.

**3-02-11. Authority of general and special agent to receive price.**

A general agent to sell, who is entrusted by the principal with the possession of the thing sold, has authority to receive the price. A special agent to sell has authority to receive the price on delivery of the thing sold, but not afterwards.

**3-02-12. Agent must inform principal - Not exceed authority.**

An agent must use ordinary diligence to keep the agent's principal informed of the agent's acts in the course of the agency. An agent must not exceed the limits of the agent's actual authority as defined by this title.

**3-02-13. When agent can delegate powers.**

An agent, unless specially forbidden by the agent's principal to do so, can delegate the agent's powers to another person in any of the following cases, and in no others:

1. When the act to be done is purely mechanical.
2. When it is such as the agent personally cannot, and the subagent lawfully can, perform.
3. When it is the usage of the place to delegate such power.
4. When such delegation is specially authorized by the principal.

**3-02-14. Lawful subagent principal's agent.**

A subagent lawfully appointed represents the principal in like manner with the original agent, and the original agent is not responsible to third persons for the acts of the subagent.

**3-02-15. Responsibility of mere agent or unauthorized subagent.**

A mere agent of an agent is not responsible as such to the principal of the latter. If an agent employs a subagent without authority, the former is a principal and the latter is the former's agent and the principal of the former has no connection with the latter.

**3-02-16. Duty of agent as collector of negotiable instrument.**

An agent employed to collect a negotiable instrument must collect it promptly and take all measures necessary to charge the parties thereto in case of its dishonor, and, if it is a bill of exchange, must present it for acceptance with reasonable diligence.

**3-02-17. Limitation of duties of licensed real estate agents.**

The duties of real estate brokers and real estate salespersons, who are licensed under chapter 43-23, and the civil liabilities arising from the duties, are limited to those duties set forth in chapter 43-23 or under rules adopted under that chapter.