

Chapter 20—Relationship with Third Parties

Types of Authority

Actual authority exists when the principal gives actual consent to the agent.

Actual express authority—the principal's spoken or written words directing the agent to do something specific.

Delegation of Authority

The general rule is that an agent may not delegate his authority to another or appoint a sub-agent. To determine if acts or duties may be delegable consideration is given to the principal's expectation as to which person should perform the task and how much of the agent's unique expertise is required.

Where an agent exceeds authority by making a delegation of responsibility, she will be considered as having acted outside the scope of her agency and will be personally liable on the unauthorized contracts.

Where the agent makes a proper delegation of authority, the principal becomes responsible for the subagent's conduct and interaction with third persons.

Effect of Termination of Agency on Authority

Upon the death or incapacity of either the principal or agent, the agent's actual and apparent authority are terminated. It is not necessary to send a termination notice to third parties.

Undisclosed Principal

The third person is unaware that an agency relationship exists and believes that the agent is acting personally.

The agent is liable as a party to the contract but may recover any losses or cost from the principal if he acted with actual authority. Subsequent to learning the identity of an undisclosed or partially disclosed principal, the third party may elect to hold either the principal or the agent to performance of the contract. He may not elect to require performance by both.

Rights of Agent Against Third Person

An agent who makes a contract with a third person on behalf of a disclosed principal usually has no right of action against the third person for breach of contract. An agent for a partially disclosed or undisclosed principal may maintain an action in her own name against the third person.