

**Restatement of the Law -- Agency
Restatement (Third) of Agency
Current through April 2006**

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Introduction

REST 3d AGEN INTRO.

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**Chapter 1. Introductory Matters
Topic 1. Definitions And Terminology**

§ 1.01 Agency Defined

[Link to Case Citations](#)

Agency is the fiduciary relationship that arises when one person (a "principal") manifests assent to another person (an "agent") that the agent shall act on the principal's behalf and subject to the principal's control, and the agent manifests assent or otherwise consents so to act.

[Case Citations](#)

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**Chapter 1. Introductory Matters
Topic 1. Definitions And Terminology**

§ 1.02 Parties' Labeling And Popular Usage Not Controlling

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An agency relationship arises only when the elements stated in § 1.01 are present. Whether a relationship is characterized as agency in an agreement between parties or in the context of industry or popular usage is not controlling.

Case Citations

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**Chapter 1. Introductory Matters
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§ 1.03 Manifestation

A person manifests assent or intention through written or spoken words or other conduct.

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Chapter 1. Introductory Matters
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§ 1.04 Terminology

[Link to Case Citations](#)

(1) *Coagents*. Coagents have agency relationships with the same principal. A coagent may be appointed by the principal or by another agent actually or apparently authorized by the principal to do so.

(2) *Disclosed, undisclosed, and unidentified principals*.

(a) *Disclosed principal*. A principal is disclosed if, when an agent and a third party interact, the third party has notice that the agent is acting for a principal and has notice of the principal's identity.

(b) *Undisclosed principal*. A principal is undisclosed if, when an agent and a third party interact, the third party has no notice that the agent is acting for a principal.

(c) *Unidentified principal*. A principal is unidentified if, when an agent and a third party interact, the third party has notice that the agent is acting for a principal but does not have notice of the principal's identity.

(3) *Gratuitous agent*. A gratuitous agent acts without a right to compensation.

(4) *Notice*. A person has notice of a fact if the person knows the fact, has reason to know the fact, has received an effective notification of the fact, or should know the fact to fulfill a duty owed to another person. Notice of a fact that an agent knows or has reason to know is imputed to the principal as stated in §§ 5.03 and 5.04. A notification given to or by an agent is effective as notice to or by the principal as stated in § 5.02.

(5) *Person*. A person is (a) an individual; (b) an organization or association that has legal capacity to possess rights and incur obligations; (c) a government, political subdivision, or instrumentality or entity created by government; or (d) any other entity that has legal capacity to possess rights and incur obligations.

(6) *Power given as security*. A power given as security is a power to affect the legal relations of its creator that is created in the form of a manifestation of actual authority and held for the benefit of the holder or a third person. It is given to protect a legal or equitable title or to secure the performance of a duty apart from any duties owed the holder of the power by its creator that are incident to a relationship of agency under § 1.01.

(7) *Power of attorney*. A power of attorney is an instrument that states an agent's authority.

(8) *Subagent*. A subagent is a person appointed by an agent to perform functions that the agent has consented to perform on behalf of the agent's principal and for whose conduct the appointing agent is responsible to the principal. The relationship between an appointing agent and a subagent is one of agency, created as stated in § 1.01.

(9) *Superior and subordinate coagents*. A superior coagent has the right, conferred by the principal, to direct a subordinate coagent.

(10) *Trustee and agent-trustee*. A trustee is a holder of property who is subject to fiduciary duties to deal with

the property for the benefit of charity or for one or more persons, at least one of whom is not the sole trustee. An agent-trustee is a trustee subject to the control of the settlor or of one or more beneficiaries.

Case Citations

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Chapter 2. Principles Of Attribution

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**Chapter 2. Principles Of Attribution
Topic 1. Actual Authority**

§ 2.01 Actual Authority

An agent acts with actual authority when, at the time of taking action that has legal consequences for the principal, the agent reasonably believes, in accordance with the principal's manifestations to the agent, that the principal wishes the agent so to act.

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**Chapter 2. Principles Of Attribution
Topic 1. Actual Authority**

§ 2.02 Scope Of Actual Authority

(1) An agent has actual authority to take action designated or implied in the principal's manifestations to the agent and acts necessary or incidental to achieving the principal's objectives, as the agent reasonably understands the principal's manifestations and objectives when the agent determines how to act.

(2) An agent's interpretation of the principal's manifestations is reasonable if it reflects any meaning known by the agent to be ascribed by the principal and, in the absence of any meaning known to the agent, as a reasonable person in the agent's position would interpret the manifestations in light of the context, including circumstances of which the agent has notice and the agent's fiduciary duty to the principal.

(3) An agent's understanding of the principal's objectives is reasonable if it accords with the principal's manifestations and the inferences that a reasonable person in the agent's position would draw from the circumstances creating the agency.

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**Chapter 2. Principles Of Attribution
Topic 2. Apparent Authority**

§ 2.03 Apparent Authority

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Apparent authority is the power held by an agent or other actor to affect a principal's legal relations with third parties when a third party reasonably believes the actor has authority to act on behalf of the principal and that belief is traceable to the principal's manifestations.

[Case Citations](#)

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**Chapter 2. Principles Of Attribution
Topic 3. Respondeat Superior**

§ 2.04 Respondeat Superior

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An employer is subject to liability for torts committed by employees while acting within the scope of their employment.

Case Citations

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Topic 4. Related Doctrines

§ 2.05 Estoppel To Deny Existence Of Agency Relationship

A person who has not made a manifestation that an actor has authority as an agent and who is not otherwise liable as a party to a transaction purportedly done by the actor on that person's account is subject to liability to a third party who justifiably is induced to make a detrimental change in position because the transaction is believed to be on the person's account, if

- (1) the person intentionally or carelessly caused such belief, or**
- (2) having notice of such belief and that it might induce others to change their positions, the person did not take reasonable steps to notify them of the facts.**

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§ 2.06 Liability Of Undisclosed Principal

(1) **An undisclosed principal is subject to liability to a third party who is justifiably induced to make a detrimental change in position by an agent acting on the principal's behalf and without actual authority if the principal, having notice of the agent's conduct and that it might induce others to change their positions, did not take reasonable steps to notify them of the facts.**

(2) **An undisclosed principal may not rely on instructions given an agent that qualify or reduce the agent's authority to less than the authority a third party would reasonably believe the agent to have under the same circumstances if the principal had been disclosed.**

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§ 2.07 Restitution Of Benefit

If a principal is unjustly enriched at the expense of another person by the action of an agent or a person who appears to be an agent, the principal is subject to a claim for restitution by that person.

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Chapter 3. Creation And Termination Of Authority And Agency Relationships

Topic 1. Creating And Evidencing Actual Authority

§ 3.01 Creation Of Actual Authority

Actual authority, as defined in § 2.01, is created by a principal's manifestation to an agent that, as reasonably understood by the agent, expresses the principal's assent that the agent take action on the principal's behalf.

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Chapter 3. Creation And Termination Of Authority And Agency Relationships

Topic 1. Creating And Evidencing Actual Authority

§ 3.02 Formal Requirements

If the law requires a writing or record signed by the principal to evidence an agent's authority to bind a principal to a contract or other transaction, the principal is not bound in the absence of such a writing or record. A principal may be estopped to assert the lack of such a writing or record when a third party has been induced to make a detrimental change in position by the reasonable belief that an agent has authority to bind the principal that is traceable to a manifestation made by the principal.

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Chapter 3. Creation And Termination Of Authority And Agency Relationships

Topic 2. Creating Apparent Authority

§ 3.03 Creation Of Apparent Authority

Apparent authority, as defined in § 2.03, is created by a person's manifestation that another has authority to act with legal consequences for the person who makes the manifestation, when a third party reasonably believes the actor to be authorized and the belief is traceable to the manifestation.

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Chapter 3. Creation And Termination Of Authority And Agency Relationships

Topic 3. Capacity To Act As Principal Or Agent

§ 3.04 Capacity To Act As Principal

(1) **An individual has capacity to act as principal in a relationship of agency as defined in § 1.01 if, at the time the agent takes action, the individual would have capacity if acting in person.**

(2) **The law applicable to a person that is not an individual governs whether the person has capacity to be a principal in a relationship of agency as defined in § 1.01, as well as the effect of the person's lack or loss of capacity on those who interact with it.**

(3) **If performance of an act is not delegable, its performance by an agent does not constitute performance by the principal.**

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Chapter 3. Creation And Termination Of Authority And Agency Relationships

Topic 3. Capacity To Act As Principal Or Agent

§ 3.05 Capacity To Act As Agent

Any person may ordinarily be empowered to act so as to affect the legal relations of another. The actor's capacity governs the extent to which, by so acting, the actor becomes subject to duties and liabilities to the person whose legal relations are affected or to third parties.

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Chapter 3. Creation And Termination Of Authority And Agency Relationships

Topic 4. Termination Of Agent's Power

Title A. Termination Of Actual Authority

§ 3.06 Termination Of Actual Authority--In General

An agent's actual authority may be terminated by:

- (1) the agent's death, cessation of existence, or suspension of powers as stated in § 3.07(1) and (3); or**
- (2) the principal's death, cessation of existence, or suspension of powers as stated in § 3.07(2) and (4); or**
- (3) the principal's loss of capacity, as stated in § 3.08(1) and (3); or**
- (4) an agreement between the agent and the principal or the occurrence of circumstances on the basis of which the agent should reasonably conclude that the principal no longer would assent to the agent's taking action on the principal's behalf, as stated in § 3.09; or**
- (5) a manifestation of revocation by the principal to the agent, or of renunciation by the agent to the principal, as stated in § 3.10(1); or**
- (6) the occurrence of circumstances specified by statute.**

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Topic 4. Termination Of Agent's Power

Title A. Termination Of Actual Authority

§ 3.07 Death, Cessation Of Existence, And Suspension Of Powers

- (1) **The death of an individual agent terminates the agent's actual authority.**
- (2) **The death of an individual principal terminates the agent's actual authority. The termination is effective only when the agent has notice of the principal's death. The termination is also effective as against a third party with whom the agent deals when the third party has notice of the principal's death.**
- (3) **When an agent that is not an individual ceases to exist or commences a process that will lead to cessation of existence or when its powers are suspended, the agent's actual authority terminates except as provided by law.**
- (4) **When a principal that is not an individual ceases to exist or commences a process that will lead to cessation of its existence or when its powers are suspended, the agent's actual authority terminates except as provided by law.**

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Topic 4. Termination Of Agent's Power

Title A. Termination Of Actual Authority

§ 3.08 Loss Of Capacity

(1) An individual principal's loss of capacity to do an act terminates the agent's actual authority to do the act. The termination is effective only when the agent has notice that the principal's loss of capacity is permanent or that the principal has been adjudicated to lack capacity. The termination is also effective as against a third party with whom the agent deals when the third party has notice that the principal's loss of capacity is permanent or that the principal has been adjudicated to lack capacity.

(2) A written instrument may make an agent's actual authority effective upon a principal's loss of capacity, or confer it irrevocably regardless of such loss.

(3) If a principal that is not an individual loses capacity to do an act, its agent's actual authority to do the act is terminated.

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Title A. Termination Of Actual Authority

§ 3.09 Termination By Agreement Or By Occurrence Of Changed Circumstances

An agent's actual authority terminates (1) as agreed by the agent and the principal, subject to the provisions of § 3.10; or (2) upon the occurrence of circumstances on the basis of which the agent should reasonably conclude that the principal no longer would assent to the agent's taking action on the principal's behalf.

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Title A. Termination Of Actual Authority

§ 3.10 Manifestation Terminating Actual Authority

(1) Notwithstanding any agreement between principal and agent, an agent's actual authority terminates if the agent renounces it by a manifestation to the principal or if the principal revokes the agent's actual authority by a manifestation to the agent. A revocation or a renunciation is effective when the other party has notice of it.

(2) A principal's manifestation of revocation is, unless otherwise agreed, ineffective to terminate a power given as security or to terminate a proxy to vote securities or other membership or ownership interests that is made irrevocable in compliance with applicable legislation. See §§ 3.12-3.13.

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Topic 4. Termination Of Agent's Power

Title B. Termination Of Apparent Authority

§ 3.11 Termination Of Apparent Authority

Link to Case Citations

- (1) The termination of actual authority does not by itself end any apparent authority held by an agent.**
- (2) Apparent authority ends when it is no longer reasonable for the third party with whom an agent deals to believe that the agent continues to act with actual authority.**

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Topic 4. Termination Of Agent's Power

Title C. Irrevocable Powers

§ 3.12 Power Given As Security; Irrevocable Proxy

(1) A power given as security is a power to affect the legal relations of its creator that is created in the form of a manifestation of actual authority and held for the benefit of the holder or a third person. This power is given to protect a legal or equitable title or to secure the performance of a duty apart from any duties owed the holder of the power by its creator that are incident to a relationship of agency under § 1.01. It is given upon the creation of the duty or title or for consideration. It is distinct from actual authority that the holder may exercise if the holder is an agent of the creator of the power.

(2) A power to exercise voting rights associated with securities or a membership interest may be conferred on a proxy through a manifestation of actual authority. The power may be given as security under (1) and may be made irrevocable in compliance with applicable legislation.

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Topic 4. Termination Of Agent's Power

Title C. Irrevocable Powers

§ 3.13 Termination Of Power Given As Security Or Irrevocable Proxy

- (1) A power given as security or an irrevocable proxy is terminated by an event that
- (a) discharges the obligation secured by the power or terminates the interest secured or supported by the proxy, or
 - (b) makes its execution illegal or impossible, or
 - (c) constitutes an effective surrender of the power or proxy by the person for whose benefit it was created or conferred.
- (2) Unless otherwise agreed, neither a power given as security nor a proxy made irrevocable as provided in § 3.12(2) is terminated by:
- (a) a manifestation revoking the power or proxy made by the person who created it; or
 - (b) surrender of the power or proxy by its holder if it is held for the benefit of another person, unless that person consents; or
 - (c) loss of capacity by the creator or the holder of the power or proxy; or
 - (d) death of the holder of the power or proxy, unless the holder's death terminates the interest secured or supported by the power or proxy; or
 - (e) death of the creator of the power or proxy, if the power or proxy is given as security for the performance of a duty that does not terminate with the death of its creator.

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Chapter 3. Creation And Termination Of Authority And Agency Relationships

Topic 5. Agents With Multiple Principals

§ 3.14 Agents With Multiple Principals

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An agent acting in the same transaction or matter on behalf of more than one principal may be one or both of the following:

- (a) a subagent, as stated in § 3.15; or**
- (b) an agent for coprincipals, as stated in § 3.16.**

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Topic 5. Agents With Multiple Principals

§ 3.15 Subagency

(1) A subagent is a person appointed by an agent to perform functions that the agent has consented to perform on behalf of the agent's principal and for whose conduct the appointing agent is responsible to the principal. The relationships between a subagent and the appointing agent and between the subagent and the appointing agent's principal are relationships of agency as stated in § 1.01.

(2) An agent may appoint a subagent only if the agent has actual or apparent authority to do so.

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Topic 5. Agents With Multiple Principals

§ 3.16 Agent For Coprincipals

Two or more persons may as coprincipals appoint an agent to act for them in the same transaction or matter.

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Chapter 4. Ratification

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Chapter 4. Ratification

§ 4.01 Ratification Defined

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- (1) Ratification is the affirmance of a prior act done by another, whereby the act is given effect as if done by an agent acting with actual authority.**
- (2) A person ratifies an act by**
 - (a) manifesting assent that the act shall affect the person's legal relations, or**
 - (b) conduct that justifies a reasonable assumption that the person so consents.**
- (3) Ratification does not occur unless**
 - (a) the act is ratifiable as stated in § 4.03,**
 - (b) the person ratifying has capacity as stated in § 4.04,**
 - (c) the ratification is timely as stated in § 4.05, and**
 - (d) the ratification encompasses the act in its entirety as stated in § 4.07.**

[Case Citations](#)

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Chapter 4. Ratification

§ 4.02 Effect Of Ratification

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(1) Subject to the exceptions stated in subsection (2), ratification retroactively creates the effects of actual authority.

(2) Ratification is not effective:

(a) in favor of a person who causes it by misrepresentation or other conduct that would make a contract voidable;

(b) in favor of an agent against a principal when the principal ratifies to avoid a loss; or

(c) to diminish the rights or other interests of persons, not parties to the transaction, that were acquired in the subject matter prior to the ratification.

[Case Citations](#)

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Chapter 4. Ratification

§ 4.03 Acts That May Be Ratified

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A person may ratify an act if the actor acted or purported to act as an agent on the person's behalf.

[Case Citations](#)

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Chapter 4. Ratification

§ 4.04 Capacity To Ratify

(1) A person may ratify an act if

(a) the person existed at the time of the act, and

(b) the person had capacity as defined in § 3.04 at the time of ratifying the act.

(2) At a later time, a principal may avoid a ratification made earlier when the principal lacked capacity as defined in § 3.04.

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Chapter 4. Ratification

§ 4.05 Timing Of Ratification

A ratification of a transaction is not effective unless it precedes the occurrence of circumstances that would cause the ratification to have adverse and inequitable effects on the rights of third parties. These circumstances include:

- (1) any manifestation of intention to withdraw from the transaction made by the third party;**
- (2) any material change in circumstances that would make it inequitable to bind the third party, unless the third party chooses to be bound; and**
- (3) a specific time that determines whether a third party is deprived of a right or subjected to a liability.**

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Chapter 4. Ratification

§ 4.06 Knowledge Requisite To Ratification

A person is not bound by a ratification made without knowledge of material facts involved in the original act when the person was unaware of such lack of knowledge.

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Chapter 4. Ratification

§ 4.07 No Partial Ratification

A ratification is not effective unless it encompasses the entirety of an act, contract, or other single transaction.

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Chapter 4. Ratification

§ 4.08 Estoppel To Deny Ratification

If a person makes a manifestation that the person has ratified another's act and the manifestation, as reasonably understood by a third party, induces the third party to make a detrimental change in position, the person may be estopped to deny the ratification.

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Chapter 5. Notifications And Notice

§ 5.01 Notifications And Notice--In General

(1) A notification is a manifestation that is made in the form required by agreement among parties or by applicable law, or in a reasonable manner in the absence of an agreement or an applicable law, with the intention of affecting the legal rights and duties of the notifier in relation to rights and duties of persons to whom the notification is given.

(2) A notification given to or by an agent is effective as notification to or by the principal as stated in § 5.02.

(3) A person has notice of a fact if the person knows the fact, has reason to know the fact, has received an effective notification of the fact, or should know the fact to fulfill a duty owed to another person.

(4) Notice of a fact that an agent knows or has reason to know is imputed to the principal as stated in §§ 5.03 and 5.04.

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Chapter 5. Notifications And Notice

§ 5.02 Notification Given By Or To An Agent

(1) A notification given to an agent is effective as notice to the principal if the agent has actual or apparent authority to receive the notification, unless the person who gives the notification knows or has reason to know that the agent is acting adversely to the principal as stated in § 5.04.

(2) A notification given by an agent is effective as notification given by the principal if the agent has actual or apparent authority to give the notification, unless the person who receives the notification knows or has reason to know that the agent is acting adversely to the principal as stated in § 5.04.

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Chapter 5. Notifications And Notice

§ 5.03 Imputation Of Notice Of Fact To Principal

Link to Case Citations

For purposes of determining a principal's legal relations with a third party, notice of a fact that an agent knows or has reason to know is imputed to the principal if knowledge of the fact is material to the agent's duties to the principal, unless the agent

- (a) acts adversely to the principal as stated in § 5.04, or**
- (b) is subject to a duty to another not to disclose the fact to the principal.**

Case Citations

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Chapter 5. Notifications And Notice

§ 5.04 An Agent Who Acts Adversely To A Principal

Link to Case Citations

For purposes of determining a principal's legal relations with a third party, notice of a fact that an agent knows or has reason to know is not imputed to the principal if the agent acts adversely to the principal in a transaction or matter, intending to act solely for the agent's own purposes or those of another person. Nevertheless, notice is imputed

- (a) when necessary to protect the rights of a third party who dealt with the principal in good faith; or**
- (b) when the principal has ratified or knowingly retained a benefit from the agent's action.**

A third party who deals with a principal through an agent, knowing or having reason to know that the agent acts adversely to the principal, does not deal in good faith for this purpose.

Case Citations

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Chapter 6. Contracts And Other Transactions With Third Parties

Topic 1. Parties To Contracts

§ 6.01 Agent For Disclosed Principal

When an agent acting with actual or apparent authority makes a contract on behalf of a disclosed principal,

(1) the principal and the third party are parties to the contract; and

(2) the agent is not a party to the contract unless the agent and third party agree otherwise.

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Chapter 6. Contracts And Other Transactions With Third Parties

Topic 1. Parties To Contracts

§ 6.02 Agent For Unidentified Principal

When an agent acting with actual or apparent authority makes a contract on behalf of an unidentified principal,

- (1) the principal and the third party are parties to the contract; and**
- (2) the agent is a party to the contract unless the agent and the third party agree otherwise.**

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Chapter 6. Contracts And Other Transactions With Third Parties

Topic 1. Parties To Contracts

§ 6.03 Agent For Undisclosed Principal

When an agent acting with actual authority makes a contract on behalf of an undisclosed principal,

(1) unless excluded by the contract, the principal is a party to the contract;

(2) the agent and the third party are parties to the contract; and

(3) the principal, if a party to the contract, and the third party have the same rights, liabilities, and defenses against each other as if the principal made the contract personally, subject to §§ 6.05-6.09.

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Chapter 6. Contracts And Other Transactions With Third Parties

Topic 1. Parties To Contracts

§ 6.04 Principal Does Not Exist Or Lacks Capacity

Unless the third party agrees otherwise, a person who makes a contract with a third party purportedly as an agent on behalf of a principal becomes a party to the contract if the purported agent knows or has reason to know that the purported principal does not exist or lacks capacity to be a party to a contract.

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Chapter 6. Contracts And Other Transactions With Third Parties

Topic 2. Rights, Liabilities, And Defenses

Title A. General

§ 6.05 Contract That Is Unauthorized In Part Or That Combines Orders Of Several Principals

(1) If an agent makes a contract with a third party that differs from the contract that the agent had actual or apparent authority to make only in an amount or by the inclusion or exclusion of a separable part, the principal is subject to liability to the third party to the extent of the contract that the agent had actual or apparent authority to make if

(a) the third party seasonably makes a manifestation to the principal of willingness to be bound; and

(b) the principal has not changed position in reasonable reliance on the belief that no contract bound the principal and the third party.

(2) Two or more principals may authorize the same agent to make separate contracts for them. If the agent makes a single contract with a third party on the principals' behalfs that combines the principals' separate orders or interests and calls for a single performance by the third party,

(a) if the agent purports to make the combined contract on behalf of disclosed principals, the agent is subject to liability to the third party for breach of the agent's warranty of authority as stated in § 6.10, unless the separate principals are bound by the combined contract;

(b) if the principals are unidentified or undisclosed, the third party and the agent are the only parties to the combined contract; and

(c) unless the agent acted with actual or apparent authority to bind each of the principals to the combined contract,

(i) subject to (1), none of the separate principals is subject to liability on the combined contract; and

(ii) the third party is not subject to liability on the combined contract to any of the separate principals.

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Chapter 6. Contracts And Other Transactions With Third Parties

Topic 2. Rights, Liabilities, And Defenses

Title A. General

§ 6.06 Setoff

(1) When an agent makes a contract on behalf of a disclosed or unidentified principal, unless the principal and the third party agree otherwise,

(a) the third party may not set off any amount that the agent independently owes the third party against an amount the third party owes the principal under the contract; and

(b) the principal may not set off any amount that the third party independently owes the agent against an amount the principal owes the third party under the contract.

(2) When an agent makes a contract on behalf of an undisclosed principal,

(a) the third party may set off

(i) any amount that the agent independently owed the third party at the time the agent made the contract and

(ii) any amount that the agent thereafter independently comes to owe the third party until the third party has notice that the agent acts on behalf of a principal against an amount the third party owes the principal under the contract;

(b) after the third party has notice that the agent acts on behalf of a principal, the third party may not set off any amount that the agent thereafter independently comes to owe the third party against an amount the third party owes the principal under the contract unless the principal consents; and

(c) the principal may not set off any amount that the third party independently owes the agent against an amount that the principal owes the third party under the contract, unless the principal and the third party agree otherwise.

(3) Unless otherwise agreed, an agent who is a party to a contract may not set off any amount that the principal independently owes the agent against an amount that the agent owes the third party under the contract. However, with the principal's consent, the agent may set off any amount that the principal could set off against an amount that the principal owes the third party under the contract.

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Chapter 6. Contracts And Other Transactions With Third Parties

Topic 2. Rights, Liabilities, And Defenses

Title B. Subsequent Dealings Between Third Party And Principal Or Agent

§ 6.07 Settlement With Agent By Principal Or Third Party

(1) A principal's payment to or settlement of accounts with an agent discharges the principal's liability to a third party with whom the agent has made a contract on the principal's behalf only when the principal acts in reasonable reliance on a manifestation by the third party, not induced by misrepresentation by the agent, that the agent has settled the account with the third party.

(2) A third party's payment to or settlement of accounts with an agent discharges the third party's liability to the principal if the agent acts with actual or apparent authority in accepting the payment or settlement.

(3) When an agent has made a contract on behalf of an undisclosed principal,

(a) until the third party has notice of the principal's existence, the third party's payment to or settlement of accounts with the agent discharges the third party's liability to the principal;

(b) after the third party has notice of the principal's existence, the third party's payment to or settlement of accounts with the agent discharges the third party's liability to the principal if the agent acts with actual or apparent authority in accepting the payment or settlement; and

(c) after receiving notice of the principal's existence, the third party may demand reasonable proof of the principal's identity and relationship to the agent. Until such proof is received, the third party's payment to or settlement of accounts in good faith with the agent discharges the third party's liability to the principal.

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Chapter 6. Contracts And Other Transactions With Third Parties

Topic 2. Rights, Liabilities, And Defenses

Title B. Subsequent Dealings Between Third Party And Principal Or Agent

§ 6.08 Other Subsequent Dealings Between Third Party And Agent

(1) When an agent has made a contract with a third party on behalf of a disclosed or unidentified principal, subsequent dealings between the agent and the third party may increase or diminish the principal's rights or liabilities to the third party if the agent acts with actual or apparent authority or the principal ratifies the agent's action.

(2) When an agent has made a contract with a third party on behalf of an undisclosed principal,

(a) until the third party has notice of the principal's existence, subsequent dealings between the third party and the agent may increase or diminish the rights or liabilities of the principal to the third party if the agent acts with actual authority, or the principal ratifies the agent's action; and

(b) after the third party has notice of the principal's existence, subsequent dealings between the third party and the agent may increase or diminish the principal's rights or liabilities to the third party if the agent acts with actual or apparent authority or the principal ratifies the agent's action.

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Chapter 6. Contracts And Other Transactions With Third Parties

Topic 2. Rights, Liabilities, And Defenses

Title B. Subsequent Dealings Between Third Party And Principal Or Agent

§ 6.09 Effect Of Judgment Against Agent Or Principal

When an agent has made a contract with a third party on behalf of a principal, unless the contract provides otherwise,

- (1) the liability, if any, of the principal or the agent to the third party is not discharged if the third party obtains a judgment against the other; and**
- (2) the liability, if any, of the principal or the agent to the third party is discharged to the extent a judgment against the other is satisfied.**

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Chapter 6. Contracts And Other Transactions With Third Parties

Topic 2. Rights, Liabilities, And Defenses

Title C. Agent's Warranties And Representations

§ 6.10 Agent's Implied Warranty Of Authority

A person who purports to make a contract, representation, or conveyance to or with a third party on behalf of another person, lacking power to bind that person, gives an implied warranty of authority to the third party and is subject to liability to the third party for damages for loss caused by breach of that warranty, including loss of the benefit expected from performance by the principal, unless

- (1) the principal or purported principal ratifies the act as stated in § 4.01; or**
- (2) the person who purports to make the contract, representation, or conveyance gives notice to the third party that no warranty of authority is given; or**
- (3) the third party knows that the person who purports to make the contract, representation, or conveyance acts without actual authority.**

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Chapter 6. Contracts And Other Transactions With Third Parties

Topic 2. Rights, Liabilities, And Defenses

Title C. Agent's Warranties And Representations

§ 6.11 Agent's Representations

(1) When an agent for a disclosed or unidentified principal makes a false representation about the agent's authority to a third party, the principal is not subject to liability unless the agent acted with actual or apparent authority in making the representation and the third party does not have notice that the agent's representation is false.

(2) A representation by an agent made incident to a contract or conveyance is attributed to a disclosed or unidentified principal as if the principal made the representation directly when the agent had actual or apparent authority to make the contract or conveyance unless the third party knew or had reason to know that the representation was untrue or that the agent acted without actual authority in making it.

(3) A representation by an agent made incident to a contract or conveyance is attributed to an undisclosed principal as if the principal made the representation directly when

(a) the agent acted with actual authority in making the representation, or

(b) the agent acted without actual authority in making the representation but had actual authority to make true representations about the same matter.

The agent's representation is not attributed to the principal when the third party knew or had reason to know it was untrue.

(4) When an agent who makes a contract or conveyance on behalf of an undisclosed principal falsely represents to the third party that the agent does not act on behalf of a principal, the third party may avoid the contract or conveyance if the principal or agent had notice that the third party would not have dealt with the principal.

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Chapter 7. Torts--Liability Of Agent And Principal

Topic 1. Agent's Liability

§ 7.01 Agent's Liability To Third Party

An agent is subject to liability to a third party harmed by the agent's tortious conduct. Unless an applicable statute provides otherwise, an actor remains subject to liability although the actor acts as an agent or an employee, with actual or apparent authority, or within the scope of employment.

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Chapter 7. Torts--Liability Of Agent And Principal

Topic 1. Agent's Liability

§ 7.02 Duty To Principal; Duty To Third Party

An agent's breach of a duty owed to the principal is not an independent basis for the agent's tort liability to a third party. An agent is subject to tort liability to a third party harmed by the agent's conduct only when the agent's conduct breaches a duty that the agent owes to the third party.

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**Chapter 7. Torts--Liability Of Agent And Principal
Topic 2. Principal's Liability**

§ 7.03 Principal's Liability--In General

- (1) A principal is subject to direct liability to a third party harmed by an agent's conduct when
- (a) as stated in § 7.04, the agent acts with actual authority or the principal ratifies the agent's conduct and
 - (i) the agent's conduct is tortious, or
 - (ii) the agent's conduct, if that of the principal, would subject the principal to tort liability; or
 - (b) as stated in § 7.05, the principal is negligent in selecting, supervising, or otherwise controlling the agent; or
 - (c) as stated in § 7.06, the principal delegates performance of a duty to use care to protect other persons or their property to an agent who fails to perform the duty.
- (2) A principal is subject to vicarious liability to a third party harmed by an agent's conduct when
- (a) as stated in § 7.07, the agent is an employee who commits a tort while acting within the scope of employment; or
 - (b) as stated in § 7.08, the agent commits a tort when acting with apparent authority in dealing with a third party on or purportedly on behalf of the principal.

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**Chapter 7. Torts--Liability Of Agent And Principal
Topic 2. Principal's Liability**

§ 7.04 Agent Acts With Actual Authority

A principal is subject to liability to a third party harmed by an agent's conduct when the agent's conduct is within the scope of the agent's actual authority or ratified by the principal; and

(1) the agent's conduct is tortious, or

(2) the agent's conduct, if that of the principal, would subject the principal to tort liability.

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Chapter 7. Torts--Liability Of Agent And Principal

Topic 2. Principal's Liability

§ 7.05 Principal's Negligence In Conducting Activity Through Agent; Principal's Special Relationship With Another Person

(1) A principal who conducts an activity through an agent is subject to liability for harm to a third party caused by the agent's conduct if the harm was caused by the principal's negligence in selecting, training, retaining, supervising, or otherwise controlling the agent.

(2) When a principal has a special relationship with another person, the principal owes that person a duty of reasonable care with regard to risks arising out of the relationship, including the risk that agents of the principal will harm the person with whom the principal has such a special relationship.

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Chapter 7. Torts--Liability Of Agent And Principal

Topic 2. Principal's Liability

§ 7.06 Failure In Performance Of Principal's Duty Of Protection

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A principal required by contract or otherwise by law to protect another cannot avoid liability by delegating performance of the duty, whether or not the delegate is an agent.

Case Citations

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Chapter 7. Torts--Liability Of Agent And Principal

Topic 2. Principal's Liability

§ 7.07 Employee Acting Within Scope Of Employment

(1) An employer is subject to vicarious liability for a tort committed by its employee acting within the scope of employment.

(2) An employee acts within the scope of employment when performing work assigned by the employer or engaging in a course of conduct subject to the employer's control. An employee's act is not within the scope of employment when it occurs within an independent course of conduct not intended by the employee to serve any purpose of the employer.

(3) For purposes of this section,

(a) an employee is an agent whose principal controls or has the right to control the manner and means of the agent's performance of work, and

(b) the fact that work is performed gratuitously does not relieve a principal of liability.

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**Chapter 7. Torts--Liability Of Agent And Principal
Topic 2. Principal's Liability**

§ 7.08 Agent Acts With Apparent Authority

[Link to Case Citations](#)

A principal is subject to vicarious liability for a tort committed by an agent in dealing or communicating with a third party on or purportedly on behalf of the principal when actions taken by the agent with apparent authority constitute the tort or enable the agent to conceal its commission.

[Case Citations](#)

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Chapter 8. Duties Of Agent And Principal To Each Other

Topic 1. Agent's Duties To Principal

Title A. General Fiduciary Principle

§ 8.01 General Fiduciary Principle

An agent has a fiduciary duty to act loyally for the principal's benefit in all matters connected with the agency relationship.

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Chapter 8. Duties Of Agent And Principal To Each Other

Topic 1. Agent's Duties To Principal

Title B. Duties Of Loyalty

§ 8.02 Material Benefit Arising Out Of Position

An agent has a duty not to acquire a material benefit from a third party in connection with transactions conducted or other actions taken on behalf of the principal or otherwise through the agent's use of the agent's position.

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Topic 1. Agent's Duties To Principal

Title B. Duties Of Loyalty

§ 8.03 Acting As Or On Behalf Of An Adverse Party

An agent has a duty not to deal with the principal as or on behalf of an adverse party in a transaction connected with the agency relationship.

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§ 8.04 Competition

Throughout the duration of an agency relationship, an agent has a duty to refrain from competing with the principal and from taking action on behalf of or otherwise assisting the principal's competitors. During that time, an agent may take action, not otherwise wrongful, to prepare for competition following termination of the agency relationship.

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Chapter 8. Duties Of Agent And Principal To Each Other

Topic 1. Agent's Duties To Principal

Title B. Duties Of Loyalty

§ 8.05 Use Of Principal's Property; Use Of Confidential Information

An agent has a duty

- (1) not to use property of the principal for the agent's own purposes or those of a third party; and**
- (2) not to use or communicate confidential information of the principal for the agent's own purposes or those of a third party.**

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Chapter 8. Duties Of Agent And Principal To Each Other

Topic 1. Agent's Duties To Principal

Title B. Duties Of Loyalty

§ 8.06 Principal's Consent

(1) Conduct by an agent that would otherwise constitute a breach of duty as stated in §§ 8.01, 8.02, 8.03, 8.04, and 8.05 does not constitute a breach of duty if the principal consents to the conduct, provided that

(a) in obtaining the principal's consent, the agent

(i) acts in good faith,

(ii) discloses all material facts that the agent knows, has reason to know, or should know would reasonably affect the principal's judgment unless the principal has manifested that such facts are already known by the principal or that the principal does not wish to know them, and

(iii) otherwise deals fairly with the principal; and

(b) the principal's consent concerns either a specific act or transaction, or acts or transactions of a specified type that could reasonably be expected to occur in the ordinary course of the agency relationship.

(2) An agent who acts for more than one principal in a transaction between or among them has a duty

(a) to deal in good faith with each principal,

(b) to disclose to each principal

(i) the fact that the agent acts for the other principal or principals, and

(ii) all other facts that the agent knows, has reason to know, or should know would reasonably affect the principal's judgment unless the principal has manifested that such facts are already known by the principal or that the principal does not wish to know them, and

(c) otherwise to deal fairly with each principal.

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**Chapter 8. Duties Of Agent And Principal To Each Other
Topic 1. Agent's Duties To Principal
Title C. Duties Of Performance**

§ 8.07 Duty Created By Contract

An agent has a duty to act in accordance with the express and implied terms of any contract between the agent and the principal.

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Chapter 8. Duties Of Agent And Principal To Each Other

Topic 1. Agent's Duties To Principal

Title C. Duties Of Performance

§ 8.08 Duties Of Care, Competence, And Diligence

Subject to any agreement with the principal, an agent has a duty to the principal to act with the care, competence, and diligence normally exercised by agents in similar circumstances. Special skills or knowledge possessed by an agent are circumstances to be taken into account in determining whether the agent acted with due care and diligence. If an agent claims to possess special skills or knowledge, the agent has a duty to the principal to act with the care, competence, and diligence normally exercised by agents with such skills or knowledge.

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Chapter 8. Duties Of Agent And Principal To Each Other

Topic 1. Agent's Duties To Principal

Title C. Duties Of Performance

§ 8.09 Duty To Act Only Within Scope Of Actual Authority And To Comply With Principal's Lawful Instructions

(1) An agent has a duty to take action only within the scope of the agent's actual authority.

(2) An agent has a duty to comply with all lawful instructions received from the principal and persons designated by the principal concerning the agent's actions on behalf of the principal.

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Title C. Duties Of Performance**

§ 8.10 Duty Of Good Conduct

An agent has a duty, within the scope of the agency relationship, to act reasonably and to refrain from conduct that is likely to damage the principal's enterprise.

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Topic 1. Agent's Duties To Principal

Title C. Duties Of Performance

§ 8.11 Duty To Provide Information

An agent has a duty to use reasonable effort to provide the principal with facts that the agent knows, has reason to know, or should know when

(1) subject to any manifestation by the principal, the agent knows or has reason to know that the principal would wish to have the facts or the facts are material to the agent's duties to the principal; and

(2) the facts can be provided to the principal without violating a superior duty owed by the agent to another person.

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Chapter 8. Duties Of Agent And Principal To Each Other

Topic 1. Agent's Duties To Principal

Title C. Duties Of Performance

§ 8.12 Duties Regarding Principal's Property--Segregation, Record-Keeping, And Accounting

An agent has a duty, subject to any agreement with the principal,

(1) not to deal with the principal's property so that it appears to be the agent's property;

(2) not to mingle the principal's property with anyone else's; and

(3) to keep and render accounts to the principal of money or other property received or paid out on the principal's account.

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Topic 2. Principal's Duties To Agent**

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**Chapter 8. Duties Of Agent And Principal To Each Other
Topic 2. Principal's Duties To Agent**

§ 8.13 Duty Created By Contract

A principal has a duty to act in accordance with the express and implied terms of any contract between the principal and the agent.

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Topic 2. Principal's Duties To Agent**

§ 8.14 Duty To Indemnify

A principal has a duty to indemnify an agent

(1) in accordance with the terms of any contract between them; and

(2) unless otherwise agreed,

(a) when the agent makes a payment

(i) within the scope of the agent's actual authority, or

(ii) that is beneficial to the principal, unless the agent acts officiously in making the payment; or

(b) when the agent suffers a loss that fairly should be borne by the principal in light of their relationship.

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Chapter 8. Duties Of Agent And Principal To Each Other

Topic 2. Principal's Duties To Agent

§ 8.15 Principal's Duty To Deal Fairly And In Good Faith

A principal has a duty to deal with the agent fairly and in good faith, including a duty to provide the agent with information about risks of physical harm or pecuniary loss that the principal knows, has reason to know, or should know are present in the agent's work but unknown to the agent.

REST 3d AGEN § 8.15

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