

18 GCA BUSINESS STRUCTURE & FUNCTION
CH. 20 AGENCY IN GENERAL

PART 3
AGENCY

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Chapter 21. Particular Agencies.

CHAPTER 20
AGENCY IN GENERAL

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DEFINITION OF AGENCY

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§ 20101. Agency.

An *agent* is one who represents another, called the *principal*, in dealings with third persons. Such representation is called *agency*.

SOURCE: CC § 2295. All sources in this Chapter are to the original enactment in 1953 unless otherwise stated.

§ 20102. Who may Appoint and Who may be an Agent.

Any person having capacity to contract may appoint an agent, and any person may be an agent.

SOURCE: CC § 2296.

§ 20103. General or Special Agents.

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An agent for a particular act or transaction is called a special agent. All others are general agents.

SOURCE: CC § 2297.

§ 20104. Actual or Ostensible Agents.

An agency is either actual or ostensible.

SOURCE: CC § 2298.

§ 20105. Actual Agency.

An agency is actual when the agent is really employed by the principal.

SOURCE: CC § 2299.

§ 20106. Ostensible Agency.

An agency is ostensible when the principal intentionally, or by want of ordinary care, causes a third person to believe another to be his agent who is not really employed by him.

SOURCE: CC § 2300.

NOTE: No §§ 2301-2303 existed in the Civil Code.

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§ 20201. What Authority may be Conferred.

An agent may be authorized to do any acts which his principal might do, except those to which the latter is bound to give his personal attention.

SOURCE: CC § 2304.

§ 20202. Agent may Perform Acts Required by Law.

Every act which, according to this Code, 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.

SOURCE: CC § 2305.

NOTE: The term *Code* refers to the former Civil Code, which now is found in a number of separate Titles of the Guam Code Annotated. See the Table of Sections Affected in the latest *Session Laws* and in the tables in this Title for the specific equivalent sections.

§ 20203. Agent Cannot Have Authority to Defraud Principal.

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

SOURCE: CC § 2306.

§ 20204. Creation of Agency.

An agency may be created, and an authority may be conferred, by a precedent authorization or a subsequent ratification.

SOURCE: CC § 2307.

§ 20205. Consideration Unnecessary.

A consideration is not necessary to make an authority, whether precedent or subsequent, binding upon the principal.

SOURCE: CC § 2308.

§ 20206. Form of Authority.

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

SOURCE: CC § 2309.

§ 20207. Ratification of Agent's Acts.

A ratification can be made only in the manner that would have been necessary to confer an original authority for the act ratified, or where an oral authorization would suffice, by accepting or retaining the benefit of the act, with notice thereof.

SOURCE: CC § 2310.

§ 20208. Ratification of a Part of Transaction.

Ratification of a part of an indivisible transaction is a ratification of the whole.

SOURCE: CC § 2311.

§ 20209. When Ratification Void.

A ratification is not valid unless, at the time of ratifying the act done, the principal has power to confer authority for such an act.

SOURCE: CC § 2312.

§ 20210. Ratification not to Injure Third Parties.

No unauthorized act can be made valid, retroactively, to the prejudice of third persons, without their consent.

SOURCE: CC § 2313.

§ 20211. Rescission After Ratification.

A ratification may be rescinded when made without such consent as is required in a contract, or with an imperfect knowledge of the material facts of the transaction ratified, but not otherwise.

SOURCE: CC § 2314.

§ 20212. Measure of Agent's Authority.

An agent has such authority as the principal, actually or ostensibly, confers upon him.

SOURCE: CC § 2315.

§ 20213. What is Actual Authority.

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 himself to possess.

SOURCE: CC § 2316.

§ 20214. What is Ostensible Authority.

Ostensible authority is such as a principal intentionally, or by want of ordinary care, causes or allows a third person to believe the agent to possess.

SOURCE: CC § 2317.

§ 20215. Agent's Authority as to Those Having Notice of Restrictions.

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

SOURCE: CC § 2318.

§ 20216. Agent's Necessary Authority.

An agent has authority:

1. To do everything necessary or proper and usual, in the ordinary course of business, for effecting the purpose of his agency, and
2. To make a representation regarding any matter of fact, not including the terms of his authority, but upon which his right to use his 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.

SOURCE: CC § 2319.

§ 20217. Agent Disobeying Instructions.

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

SOURCE: CC § 2320.

§ 20218. How Authority Construed.

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

SOURCE: CC § 2321.

§ 20219. Exceptions to General Authority.

An authority expressed in general terms, however broad, does not authorize an agent:

1. To act in his own name, unless it is the usual course of business to do so;
2. To define the scope of his agency; or
3. To do any act which a trustee is forbidden to do by Part 4, Chapter 25, Article 2 of this Title.

SOURCE: CC § 2322.

§ 20220. Sale of Personal Property - Scope of Authority.

An authority to sell personal property includes authority to warrant the title of the principal, and the quality and quantity of the property.

SOURCE: CC § 2323.

§ 20221. Sale of Real Property - Scope of Authority.

An authority to sell and convey real property includes authority to give the usual covenants of warranty.

SOURCE: CC § 2324.

§ 20222. Authority of General Agent - Receipt of Price of Property.

A general agent to sell, who is instructed by the principal with the possession of the thing sold, has authority to receive the price.

SOURCE: CC § 2325.

§ 20223. Authority of Special Agent - Receipt of Price.

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A special agent to sell has authority to receive the price on delivery of the thing sold, but not afterwards.

SOURCE: CC § 2326.

NOTE: No §§2327-2329 existed in the Civil Code.

ARTICLE 3
MUTUAL OBLIGATIONS OF PRINCIPALS AND THIRD PERSONS

- § 20301. How Principal Affected by Agent's acts Within Scope of his Authority.
- § 20302. When Principal Bound by Incomplete Execution of Authority.
- § 20303. When Notice to Agent is Notice to Principal.
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- § 20306. When Exclusive Credit Given to Agent.
- § 20307. Dealing with Agent Without Knowledge of Agency.
- § 20308. Instrument Intending to Bind Principal does Bind Him.
- § 20309. Principal's Responsibility for Negligence or Omission.
- § 20310. Principal's Responsibility for Wrongs Willfully Committed by the Agent.

§ 20301. How Principal Affected by Agent's acts Within Scope of his Authority.

An agent represents his principal for all purposes within the scope of his actual or ostensible authority, and all the rights and liabilities which would accrue to the agent from transactions within such limit, if they had been entered into on his own account, accrue to the principal.

SOURCE: CC § 2330.

§ 20302. When Principal Bound by Incomplete Execution of Authority.

A principal is bound by an incomplete execution of an authority, when it is consistent with the whole purpose and scope thereof, but not otherwise.

SOURCE: CC § 2331.

§ 20303. When Notice to Agent is Notice to Principal.

As against a principal, both principal and agent are deemed to have notice of whatever either has notice of, and ought, in good faith and the exercise of ordinary care and diligence, to communicate to the other.

SOURCE: CC § 2332.

§ 20304. Obligation of Principal when Agent Exceeds Authority.

When an agent exceeds his authority, his principal is bound by his authorized acts so far only as they can be plainly separated from those which are unauthorized.

SOURCE: CC § 2333.

§ 20305. Principal Bound for Acts done under Ostensible Authority.

A principal is bound by the acts of his agent, under a merely ostensible authority, to those persons only who have in good faith and without want of ordinary care incurred a liability or parted with value, upon the faith thereof.

SOURCE: CC § 2334.

§ 20306. When Exclusive Credit Given to Agent.

If exclusive credit is given to an agent by the person dealing with him, his principal is exonerated by payment or other satisfaction made by him to his agent in good faith, before receiving notice of the creditor's election to hold him responsible.

SOURCE: CC § 2335.

§ 20307. Dealing with Agent Without Knowledge of Agency.

One who deals with an agent without knowing or having reason to believe that the agent acts as such in the transaction, may set off against any claim of the principal arising out of the same, all claims which he might have set off against the agent before notice of the agency.

SOURCE: CC § 2336.

§ 20308. Instrument Intending to Bind Principal does Bind him.

An instrument within the scope of his authority by which the agent intends to bind his principal, does bind him if such intent is plainly inferable from the instrument itself.

SOURCE: CC § 2337.

§ 20309. Principal's Responsibility for Negligence or Omission.

Unless required by or under the authority of law to employ that particular agent, a principal is responsible to third persons for the negligence of his agent in the transaction of the business of the agency, including wrongful acts committed by such agent in and as a part of the transaction of such business, and for his willful omission to fulfill the obligations of the principal.

SOURCE: CC § 2338.

§ 20310. Principal's Responsibility for Wrongs Willfully Committed by the Agent.

A principal is responsible for no other wrongs committed by his agent than those mentioned in § 20309, unless he has authorized or ratified them, even though they are committed while the agent is engaged in his services.

SOURCE: CC § 2339.

NOTE: No §§2340-2341 existed in the Civil Code.

ARTICLE 4
AGENT'S OBLIGATIONS TO THIRD PERSONS

§ 20401. Warranty of Authority.

§ 20402. Agent's Responsibility to Third Persons.

§ 20403. Surrender Property to Third Person.

§ 20404. Code Provisions Governing.

§ 20401. Warranty of Authority.

One who assumes to act as an agent thereby warrants, to all who deal with him in that capacity, that he has the authority which he assume.

SOURCE: CC § 2342.

§ 20402. Agent's Responsibility to Third Persons.

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One who assumes to act as an agent is responsible to third persons as a principal for his acts in the course of his agency, in any of the following cases, and in no others:

1. When, with his consent, credit is given to him personally in a transaction;
2. When he enters into a written contract in the name of his principal, without believing, in good faith, that he has authority to do so; or
3. When his acts are wrongful in their nature.

SOURCE: CC § 2343.

§ 20403. Surrender Property to Third Person.

If an agent receives anything for the benefit of his principal, to the possession of which another person is entitled, he must, on demand, surrender it to such person, or so much of it as he has under his control at the time of demand, on being indemnified for any advance which he has made to his principal, in good faith, on account of the same; and is responsible therefor, if, after notice from the owner, he delivers it to his principal.

SOURCE: CC § 2344.

§ 20404. Code Provisions Governing.

The provisions of this Article are subject to the provisions of 19 Guam Code Annotated, Chapter 1.

SOURCE: CC § 2345.

NOTE: The Civil Code §2345 refers to "Part 1 of Division First of this Code". This deals with "Persons", specifically with minors, and is now found in 19 GCA Chapter 1, as are all other parts of the former Civil Code dealing with "Persons" and "Personal Rights".

NOTE: No §§2345-2348 existed in the Civil Code.

ARTICLE 5
DELEGATION OF AGENCY

§ 20501. Agent's Delegation of Powers.

§ 20502. Unauthorized Employment of Subagent.

§ 20503. Subagents Generally.

§ 20501. Agent's Delegation of Powers.

An agent, unless specially forbidden by his principal to do so, can delegate his 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 cannot himself, and the subagent can lawfully perform;
3. When it is the usage of the place to delegate such powers; or
4. When such delegation is specially authorized by the principal.

SOURCE: CC § 2349.

§ 20502. Unauthorized Employment of Subagent.

If an agent employs a subagent without authority, the former is a principal and the latter his agent, and the principal of the former has no connection with the latter.

SOURCE: CC § 2350.

§ 20503. Subagents Generally.

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.

SOURCE: CC § 2351.

NOTE: No §§2352-2354 existed in the Civil Code.

**ARTICLE 6
TERMINATION OF AGENCY**

§ 20601. Termination of Agency.

§ 20602. Termination of Power of Agency.

§ 20601. Termination of Agency.

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An agency is terminated, as to every person having notice thereof, by:

1. The expiration of its term;
2. The extinction of its subject;
3. The death of the agent;
4. The renunciation of the agency; or
5. The incapacity of the agent to act as such.

SOURCE: CC § 2355.

NOTE: In the Civil Code, Vol. 2 (1970 ed.), the editor has indicated that *agency* is the original word used in item 5, but that *agent* is probably the intent of the Legislature. Since it is the person (agent) referenced in item 4, and since the concept of *agency* cannot develop an incapacity, the Compiler has determined that the original intent of this section is the word *agent*. The equivalent item in Calif. CC § 2355 uses the term *agent*.

§ 20602. Termination of Power of Agency.

Unless the power of an agent is coupled with an interest in the subject of the agency, it is terminated, as to every person having notice thereof, by:

1. Its revocation by the principal;
2. His death; or
3. His incapacity to contract.

SOURCE: CC § 2356.

NOTE: No §§2357-2361 existed in the Civil Code.

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