

## AGENCY LAW CHART

- I. What is an agency relationship and how is it formed?
- II. What are the rights and liabilities of principals and agents?
- III. What occurs upon termination of the agency relationship?

### I. What is an agency relationship and how is it formed?

#### A. Defined

An agency is a relationship between a principal who authorizes or appoints an agent to act on his behalf.



#### B. How Formed

An agency relationship may be formed by an express or implied agreement (no writing is required) if both the principal and agent consent to the agency relationship. An agency may also be created "by estoppel" or by apparent authority; a principal who holds another person out to be her agent will be legally precluded from claiming that there is no agency relationship.

#### C. Agent w/ Actual Authority

An agent acts with express authority when the principal has granted the agent the power to bind him. The agent acts with implied authority when the agent reasonably believes that she has the power to bind the principal, based on the principal's acts. The agent may rely on custom or actions by the principal that reasonably leads the agent to think that she has the authority to act. The agent may not delegate her authority to another without the consent of the principal, unless the acts are ministerial in nature.

#### D. Agent w/ Apparent Authority

An agent has apparent authority to act when the principal leads others to believe the agent is acting with the principal's authority. A party who reasonably relies on the agent's apparent authority can hold the principal liable for contracts entered into by the agent.

#### E. Agent w/ Inherent Authority

A principal may be bound by an agent without actual authority if the agent had some authority to act and the act performed slightly exceeds the authority given. Also, an agent who acts without authority binds her principal when the principal later ratifies her act if:

- (1) the principal is aware of the transaction;
- (2) the principal accepts the benefits of the transaction or otherwise affirms the transaction.

### II. What are the rights and liabilities of principals and agents?

#### A. Duties of Agent to the Principal:

- duty to perform responsibilities under contract
  - duty of loyalty
  - duty of obedience (must obey all reasonable instructions)
  - duty of reasonable care (applying community standard of care)
  - duty to notify the principal of any important matters concerning the agency; such knowledge of the agent is imputed to the principal unless the agent is acting in her own interest or is working against the principal.
- NOTE: A sub-agent (one appointed by the agent) is also liable to the principal unless appointed without authority from the principal.

#### B. Principal's Remedies for Breach of Agent's Duty

- damages for breach of contract for failure to perform
- tort liability for intentional or negligent performance
- recovery of profits (where agent breaches duty & secretly profits)
- action for accounting to seek a return of funds
- may refuse to pay agent any owed amounts or withhold compensation

#### C. Duties of Principal to Agent:

- duty to honor terms of contract
- duty to compensate agent and reimburse for expenses incurred in carrying out authorized duties
- duty to cooperate and not interfere with agent's performance

#### D. Agent's Remedies for Principal's Breach

- agent may sue for damages for breach of contract but owes duty to mitigate any damages
- agent may make a claim or lien against principal's property unless K provides otherwise.

## E. Enforcement of Contracts Entered into with Third Parties:

- a principal is liable for a contract entered into with a third party if the agent acts with principal's authority
- an agent is liable to third party if: 1) the agent makes an implied warranty that she has the authority to enter the contract and does not (limited to actual damages); 2) all of the parties intend that agent be treated as a party to the contract; 3) the principal's identity is undisclosed or is unknown.
- a principal may sue the third party to enforce the contract unless the agent fraudulently concealed the principal's identity.

NOTE: Both a principal and agent may be sued by third party, who must elect which party to hold liable before judgment is issued.

## III. What occurs upon termination of the agency relationship?

### A. TERMINATION OF AGENCY RELATIONSHIP

An agency relationship ends when the agent is no longer authorized to act as the principal's agent:

- either principal or agent may terminate the agency relationship at will
- destruction of the subject matter of the agency
- major change in business conditions or laws
- bankruptcy, incapacity or death of principal or agent
- dissolution of corporation or partnership
- breach of agent's fiduciary duty
- occurrence of event that ends agency relationship
- expulsion by vote of other partners or court order
- partner's bankruptcy
- death or incapacity
- appointment of a receiver
- termination of business entity that is a partner

