

18 GCA BUSINESS STRUCTURE & FUNCTION
CH.21 PARTICULAR AGENCIES

CHAPTER 21
PARTICULAR AGENCIES

- Article 1. Auctioneers.
- Article 2. Factors.
- Article 3. Shipmasters & Pilots.
- Article 4. Ships' Managers.
- Article 5. Durable Power of Attorney.

ARTICLE 1
AUCTIONEERS

- § 21101. Authority from Seller.
- § 21102. Authority from Bidder.

§ 21101. Authority from Seller.

An auctioneer, in the absence of special authorization or usage to the contrary, has authority from the seller, only as follows:

1. To sell by public auction to the highest bidder;
2. To sell for cash only, except such articles as are usually sold on credit at auction;
3. To warrant, in like manner with other agents to sell, according to §20220 of this Title;
4. To prescribe reasonable rules and terms of sale;
5. To deliver the thing sold, upon payment of the price;
6. To collect the price; and
7. To do whatever else is necessary, or proper and usual, in the ordinary course of business, for effecting these purposes.

SOURCE: CC § 2362.

§ 21102. Authority from Bidder.

An auctioneer has authority from a bidder at the auction, as well as from the seller, to bind both by a memorandum of the contract, as described in the Uniform Commercial Code [Title 14, GCA].

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SOURCE: CC § 2363.

NOTE: Guam adopted the UCC, and replaced the Civil Code title on Sales with Division 2 of Title 13, GCA. This is part of the Uniform Commercial Code.

No §§ 2364-2366 existed in the Civil Code.

ARTICLE 2
FACTORS

§ 21201. What is a *Factor*.

§ 21202. Actual Authority of Factor.

§ 21203. Ostensible Authority.

§ 21201. What is a *Factor*.

A *factor* is an agent, as defined by 18 GCA §56301.

SOURCE: CC § 2367.

§ 21202. Actual Authority of Factor.

In addition to the authority of agents in general, a factor has actual authority from his principal, unless specially restricted:

1. To insure property consigned to him uninsured;
2. To sell, on credit, anything entrusted to him for sale, except such things as it is contrary to usage to sell on credit; but not to pledge, mortgage, or barter the same; and
3. To delegate his authority to his partner or servant but not to any person in an independent employment.

SOURCE: CC § 2368.

§ 21203. Ostensible Authority.

A factor has ostensible authority to deal with the property of his principal as his own, in transactions with persons not having notice of the actual ownership.

SOURCE: CC § 2369.

NOTE: No §§ 2370-2372 existed in the Civil Code.

ARTICLE 3
SHIPMASTERS & PILOTS

- § 21301. Authority of Shipmaster on Behalf of Shipowner.
- § 21302. Authority to Borrow.
- § 21303. Authority on Behalf of Owners of Cargo.
- § 21304. Power to Make Contracts.
- § 21305. Power to Hypothecate.
- § 21306. Master's Power to Sell Ship.
- § 21307. Master's Power to Sell Cargo.
- § 21308. Authority to Ransom Ship.
- § 21309. Abandonment Terminates Master's Power.
- § 21310. Personal Liability for Ship's Contracts.
- § 21311. Liability for Acts of Persons Employed on the Ship.
- § 21312. Responsibility for Pilot's Negligence.
- § 21313. Liability for Cargo Sold, etc.

§ 21301. Authority of Shipmaster on Behalf of Shipowner.

The master of a ship is a general agent for its owner in all matters concerning the same.

SOURCE: CC § 2373.

§ 21302. Authority to Borrow.

The master of a ship has authority to borrow money on the credit of its owner, if it necessary to enable him to complete the voyage, and if neither the owner nor his proper agent for such matters can be consulted without injurious delay.

SOURCE: CC § 2374.

§ 21303. Authority on Behalf of Owners of Cargo.

The master of a ship, during a voyage, is a general agent for each of the owners of the cargo, and has authority to do whatever they might do for the preservation of their respective interest, but he cannot sell or hypothecate the cargo, except in the cases mentioned in this Article.

SOURCE: CC § 2375.

§ 21304. Power to Make Contracts.

The master of a ship may procure all its necessary repairs and supplies, may engage cargo and passengers for carriage, and, in a foreign port, may enter into a charter-party and his contracts for these purposes bind the owner to the full amount of the value of the ship and freightage.

SOURCE: CC § 2376.

§ 21305. Power to Hypothecate.

The master of a ship may hypothecate the ship, freightage, and cargo, and sell part of the cargo, in the cases prescribed by the Chapters on bottomry and respondentia, and no others, except that the master may also sell the cargo, or any part of it, short of the port of destination, if found to be of such perishable nature, or in such damaged condition that if left on board or reshipped it would be entirely lost, or would seriously endanger the interests of its owners.

SOURCE: CC § 2377.

NOTE: Bottomry and Respondentia are to be found in Chapter 37 of this Title.

§ 21306. Master's Power to Sell Ship.

When a ship, whether foreign or domestic, is seriously injured, or the voyage is otherwise broken up, beyond the possibility of pursuing it, the master, in cases of necessity, may sell the ship without instructions from the owners, unless by the earliest use of ordinary means of communication he can inform the owners, and await their instructions.

SOURCE: CC § 2378.

§ 21307. Master's Power to Sell Cargo.

The master of a ship may sell the cargo, if the voyage is broken up beyond the possibility of pursuing it, and no other ship can be obtained to carry it to its destination, and the sale is otherwise absolutely necessary.

SOURCE: CC § 2379.

§ 21308. Authority to Ransom Ship.

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The master of a ship, in case of its capture, may engage to pay a ransom for it, in money or in part of the cargo, and his engagement will bind the ship, freightage, and cargo.

SOURCE: CC § 2380.

§ 21309. Abandonment Terminates Master's Power.

The power of the master of a ship to bind its owner, or the owners of the cargo, ceases upon the abandonment of the ship and freightage to insurers.

SOURCE: CC § 2381.

§ 21310. Personal Liability for Ship's Contracts.

Unless otherwise expressly agreed, or unless the contracting parties give exclusive credit to the owner, the master of a ship is personally liable upon his contracts relative thereto, even when the owner is also liable.

SOURCE: CC § 2382.

§ 21311. Liability for acts of Persons Employed on the Ship.

The master of a ship is liable to third persons for the acts of negligence of persons employed in its navigation, whether appointed by him or not, to the same extent as the owner of the ship.

SOURCE: CC § 2383.

§ 21312. Responsibility for Pilot's Negligence.

The owner or master of a ship is not responsible for the negligence of a pilot whom he is bound by law to employ; but if he is allowed an option between pilots, some of whom are competent, or is required only to pay compensation to a pilot, whether he employs him or not, he is so responsible to third persons.

SOURCE: CC § 2384.

§ 21313. Liability for Cargo Sold, etc.

The owner of a ship is bound to pay to the owner of her cargo the market value at the time of arrival of the ship at the port of her destination, of that portion of her cargo which has been sold to enable the master to pay the necessary repairs and supplies of the ship.

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SOURCE: CC § 2385.

NOTE: CC § 2386 and 2387 did not exist in the Civil Code.

ARTICLE 4
SHIPS' MANAGERS

§ 21401. What Powers a Manager Has.

§ 21402. What Powers He does not Have.

§ 21401. What Powers a Manager has.

A ship's manager has power to make contracts requisite for the performance of his duties as such; to enter into charter-parties, or make contracts for carriage; and to settle for freightage and adjust averages.

SOURCE: CC § 2388.

§ 21402. What Powers He does not Have.

Without special authority a ship's manager cannot borrow money or give up the lien for freightage, or purchase a cargo, or bind the owners of the ship to an insurance.

SOURCE: CC § 2389.

ARTICLE 5
DURABLE POWER OF ATTORNEY

§ 21501. Definition.

§ 21502. Durable Power of Attorney Not Affected By Disability.

§ 21503. Relation Of Attorney-in-Fact to Court-Appointed Fiduciary.

§ 21504. Power of Attorney Not Revoked Until Notice.

§ 21505. Proof of Continuance of Durable and Other Powers.

§ 21506. Uniformity of Application And Construction.

§ 21507. Short Title.

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SOURCE: Article 5 was added by P.L. 23-91:1.

§ 21501. Definitions.

As used in this chapter.

(a) *Durable Power of Attorney* -- A durable power of attorney is a power of attorney by which a principal designates another as the principal's attorney in fact in writing and the writing contains either the words: "This power of attorney shall not be affected by the disability of the principal" OR "This power of attorney shall become effective upon the disability or incapacity of the principal" or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incapacity. A durable power of attorney may be either general, limited, or specific in nature as determined by the principal.

(b) *Disability or incapacity* -- A person is deemed to be disabled or incapacitated, when by reason of age, disease, weakness of mind or other cause, he is unable to properly manage and take care of himself or his property, without assistance, and lacks the legal ability to act.

(c) *Competent* -- A competent person is one having sufficient ability or authority, and possessing the requisite natural or legal qualifications to act.

§ 21502. Durable Power of Attorney not Affected by Disability.

All acts done by an attorney-in-fact pursuant to a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and principal's successors in interest as if the principal were competent and not disabled.

§ 21503. Relation of Attorney-in-Fact to Court Appointed Fiduciary.

(a) If, following execution of a durable power of attorney, a court of the principal's domicile appoints a guardian of the property, or other fiduciary charged with the management of all of the principal's property except specified exclusions, the attorney-in-fact is accountable to the fiduciary as well as to the principal. The fiduciary has the power to revoke or amend the power of attorney that the principal would have had if the principal were not disabled or incapacitated.

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(b) A principal may nominate, by a durable power of attorney, the guardian of the principal's property, or guardian of the principal's person for consideration by the court if protective proceedings for the principal's person or property are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification.

§ 21504. Power of Attorney not Revoked until Notice.

The death of a principal who has executed a written durable power of attorney, does not revoke or terminate the agency as to the attorney-in-fact or other person, who, without actual knowledge of the death of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds successors in interest of the principal.

§ 21505. Proof of Continuance of Durable and Other Powers.

As to acts undertaken in good faith reliance thereon, an affidavit executed by the attorney-in-fact under a durable power of attorney, stating that the attorney-in-fact did not have, at the time of exercise of the power, actual knowledge of the termination of the power by revocation or the principal's death, is conclusive proof of the continuation of the power at that time. If the exercise of the power of attorney requires execution and delivery of any instrument that is recordable, the affidavit when authenticated for record is likewise recordable. This section does not affect any provision in a power of attorney for its termination by expiration of time or occurrence of an event other than express revocation or a change in the principal's capacity.

§ 21506. Uniformity of Application and Construction.

This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting it.

§ 21507. Short Title.

This article may be cited as the "Uniform Durable Power of Attorney Act of Guam."

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