

## **CHAPTER 3-06**

### **FACTORS**

**3-06-01. Definition.** A factor is an agent who, in the pursuit of an independent calling, is employed by another to buy or sell property in the factor's own name and is entrusted by the principal with the possession or control of the property or authorized to receive payment therefor from the purchaser.

**3-06-02. Authority of factors.** In addition to the authority of agents in general, a factor has actual authority from the factor's principal unless specially restricted:

1. To insure property consigned to the factor uninsured.
2. To sell property consigned to the factor on such credit as is usual, except such things as it is contrary to usage to sell on credit, but having once agreed with the purchaser upon the terms of credit, a factor may not extend it, nor may the factor pledge, mortgage, or barter the property so consigned.
3. To delegate the factor's authority to the factor's partner or servant, but not to any person in an independent employment.

**3-06-03. Ostensible authority of factor.** A factor has ostensible authority to deal with the property of the factor's principal as the factor's own in transactions with persons not having notice of the actual ownership.

**3-06-04. Must obey instructions - Exception.** A factor must obey instructions of the factor's principal to the same extent as any other employee, notwithstanding any advances the factor may have made to the principal upon the property consigned to the factor, except that if the principal forbids the factor to sell at the market price, the factor nevertheless may sell for the factor's reimbursement after giving to the factor's principal reasonable notice of the factor's intention to do so and of the time and place of sale, and proceeding in all respects as a pledgee.

**3-06-05. Liability under guaranty commission.** A factor who charges the factor's principal with a guaranty commission upon a sale thereby assumes absolutely to pay the price when it falls due as if it were a debt of the factor's own and not as a mere guarantor for the purchaser, but the factor does not thereby assume any additional responsibility for the safety of the factor's remittance of the proceeds.

**3-06-06. Relieved of liability by consent only.** A factor who receives property for sale under a general agreement or usage to guarantee the sale or the remittance of the proceeds cannot obtain relief from responsibility therefor without the consent of the factor's principal.