



Agent Authority: Is your Company giving your employees authority to sign contracts?

The authority to sign a contract first varies depending on the type of company involved, for example, in a Limited liability company (LLC signing authority usually lies among managers or members, and ideally, the parties who have such authority should be indicated in the operating agreement. For example, if the operating agreement defines that you are the manager, you would have the authority to sign for the company given to you by the related state code for LLC's and by way of the Operating Agreement.

Actual authority and apparent authority are the two types of authority an employee may have when signing. Actual authority is when an agent has been given explicit authorization by the company to sign for the entity; apparent authority is when an agent is given implicit authority. Actual authority is often given in writing, thereby providing documentation for an agent's actions, while implicit authority is implied through various actions of those the agent represents.

Generally, managers who sign for their company on a routine basis will have explicit authority, while other employees or managers may be acting with implicit authority. Implied or implicit authority is the type that disputes relating to proper signing authority generally arise. When a third-party "reasonably" believes, due to affirmative statements, actions the employee, titles, or other implications which indicate to the third party that they are acting for the company.

A third-party may reasonably believe, due to various affirmative statements, titles of the employee or actions of the company, that the related employee has the authority requisite authority to sign a contract for the company. If this occurs, the company may then be bound to the contract, or it may not, depending on the facts of the case.



Signing authority disputes can be highly fact-intensive, with the outcome dependent on various factors, including but not limited to:

- The agent's past conduct. Look to see if the manager has signed other contracts that the company adheres to. If this is the case, the past conduct would likely be considered a course of conduct and thereby bind the company to the contract. But if you are the party relying on the authority, get the proper authority, for example, if it is an LLC get the "Managing Member" to sign the contract.
- The agent's job duties and title. If the title of the employee is "Managing Partner" in an LLC, for example of if the principals of the company introduce the employee as my "partner," the "president," etc. the title would likely lend credibility to the implied authority of the employee to sign a contract. In an automobile dealership, the General Manager would likely have implied authority to sign general contracts that occur routinely. In contrast, he/she would less likely have the authority to sign for a bank loan.
- Whether the contract is a consumer or business-to-business contract. For example, again, in an automobile dealership, a finance manager would likely have implied authority to sign contracts for funding, but he/she would be less likely to be construed as having the authority to sign a contract for bulk oil services.

No matter what, it is best to be clear when signing contracts to mandate that the contract is signed by an authorized employee. Do your homework and make sure the correct party with authority to sign a contract is indeed the person signing on behalf of the entity you expect to bind. If you are the company, make it clear what your employees have the authority to sign and what level contracts should rise to for employees not to be authorized to sign. It is at the employee level that contract disputes can be solved before they are signed or approved if the related employee understands the authority they are given.

Georgia Apparent Authority from Case Law: Apparent authority to perform an act "is created as to a third person by written or spoken words or any other conduct of the principal which, reasonably interpreted, causes the third person to believe that the principal consents to have the



act done on his behalf by the person purporting to act for him." McKean v. GGNSC Atlanta, 329 Ga. App. 507, 510 (1) (a) (765 SE2d 681) (2014) (citation omitted)¹

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