

Growers' Agents' Responsibilities Under the PACA

Your crop is harvested and ready to market. Getting to this point hasn't been easy--you've endured sleepless nights worrying about weather conditions, bank loans, and spray schedules. You've spent thousands of hours working tirelessly to ensure that your crop is top quality and will provide the best return on your investment. But producing a crop is only half the job. The rest involves marketing.

Many growers hire sales agents to sell and market their crop. Although arrangements vary, agents typically receive a percentage of the sales price as their commission, and may also be entitled to deduct other expenses. In addition to selling the produce, agents invoice and collect, deal with customers' claims, contract with carriers, and provide growers with a detailed accounting of the sales and expenses along with payment of the net proceeds.

These agents perform an important role as the marketing link between producers and buyers of fruit and vegetables, and must therefore conduct their business within certain guidelines. The Perishable Agricultural Commodities Act, or PACA for short, promotes and enforces fair trading practices in the fruit and vegetable industry. The PACA requires that growers and their agents live up to the terms of their agreements and provides a forum that can be used to resolve any disputes that may arise.

Written Contracts

The PACA requires that agents outline the duties and responsibilities of both parties in writing before the first lot is received.

Besides being a legal requirement, written agreements just make sense--after all, your entire livelihood can be at stake and the terms of your agreement should not be dependent upon faulty memories. A simple, written contract signed by both the grower and agent is the best way to ensure that the duties and responsibilities of each are clearly defined. Agents may also meet the law's requirement by providing the grower with a written statement of company policy prior to receiving the first shipment of the grower's crop. Under the PACA, growers are then considered to have agreed to those terms when they begin to deliver product to the agent. Either way, having the duties and responsibilities of both parties in writing reduces misunderstandings and allows both parties to build a foundation for a long-term, profitable business relationship.

Elements of the Contract

Contracts vary greatly in complexity depending upon the nature of the agreement. In some instances, the agent does just about everything except provide the land on which the product is grown. This may include supplying seed and financing the planting, harvesting, and packing. In other cases, the agent may merely sell the crop, invoice the buyers, and deduct a commission. Whatever the case, the duties of both parties should be clearly spelled out in the contract, along with the costs or fees for performing each activity.

Agents can reduce their record-keeping requirements by establishing a fixed fee for each function they perform. Otherwise, the law requires agents to prepare and maintain all records necessary to document each expense.

Agents must obtain the grower's permission to carry out certain tasks. For example, an agent must secure the grower's permission if the agent expects to

consign produce, file carrier claims on the grower's behalf, or use brokers and commission merchants (passing the charges for these firms' services on to the grower). If an agent wishes to purchase product for his/her own use or plans to sell to a firm owned or controlled by the agent, permission must first be obtained from the grower -- otherwise, such sales are forbidden by the PACA. Also, if an agent wants to pool and sell produce from several growers, the contract should specify the nature of the pool and the time periods it will cover.

Contracts should also specify the timing of interim and final accountings.

If the agent wants to be able to adjust original invoice prices without repeatedly obtaining inspections to verify the condition of products at destination, the agent must obtain the grower's written consent. Otherwise, the agent must defend the grower's rights by insisting that the buyer pay the full invoice price unless the agent can prove a breach of contract with a U.S. Department of Agriculture inspection.

Records Requirements

Growers' agents must maintain detailed records documenting the disposition of the grower's product. This responsibility includes maintaining a record of all product received, issuing delivery receipts, assigning lot numbers to differentiate the sales of each grower's product, tracking the disposition of culls, and preparing accurate records that reflect the proceeds of each sale. If the agent is operating under a pool agreement with growers, the accounting must show how the pool costs and sales figures were calculated. Agents often handle the sales of many growers' crops at the same time. Because of this, the PACA requires that they keep detailed and precise records to ensure accurate accountings to

each grower. Since agents sell and receive payment for produce on their growers' behalf, they assume important ethical and legal responsibilities and must protect the growers' best interests at all times, including the requirement that they preserve the growers' right to trust protection.

Accountings to the Grower

Under the PACA, agents must provide growers with prompt, accurate, and detailed accountings. Unless the parties contract for other terms, interim accountings are due within 30 days from the agent's receipt of the first shipment of produce for sale. Thereafter, agents must provide growers with accountings every 10 days. The final accounting is due within 30 days from the date that the agent receives the last shipment for the season.

Agents are not expected to guarantee returns, and are not required to pay the grower until they have received payment from the buyer. However, if the agent guarantees payment or is negligent in extending credit, the agent may be held liable for payment to the grower. An agent must, therefore, put the grower's interests first when selling the grower's produce.

When Disputes Arise

What should you do if you question whether an agent has handled your crop properly or has paid you the correct amount due? If you believe your sales agent has not met his/her responsibilities, you should speak to a PACA specialist (telephone

The PACA law is here to ensure fairness and offers many services to assist you. For additional information, call our toll-free number, 800-495-7222, or visit our Web site at www.ams.usda.gov/paca.

numbers are noted below). If necessary, you may file a claim against the agent with the PACA Branch. When the PACA Branch receives your claim, we gather all the relevant information from both parties involved and offer our assistance in resolving the matter. In some instances, a PACA representative may have to audit the agent's records to determine whether additional proceeds are due.

The PACA Branch also offers mediation services to help agents and growers to settle disputes. Mediation is often an effective way to resolve disputes, since it places resolution directly in the hands of the interested parties. Mediation provides an outlet for settling differences outside the legal system, strengthens business relationships, and provides a forum where both parties can air their differences in a neutral atmosphere.



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April 2011

