



Fiduciary Relationships

Fiduciary Defined

A fiduciary is someone who has undertaken to act for and on behalf of another in a particular matter which gives rise to a relationship of trust and confidence at such a high level that the law recognizes a duty requiring the person who is the fiduciary to deal with the utmost integrity toward the other person in the relationship and prohibiting the fiduciary from any kind of self dealing.

Golden Rule Application

Being a fiduciary is really an application of the "Golden Rule", to treat other people as you would want to be treated if the roles were reversed. As simple as that sounds, it is becoming very complicated to do. There is an increasing realization that many of us hold more than one of these duties at any given time. Often these dual fiduciary duties may seem to conflict with one another. Disclosure of all of the facts to the person who is the beneficiary of the fiduciary relationship is one key way to avoid problems. Formal fiduciary relationships recognized in Texas are:

1. **Agents**, including escrow agents, owe a duty to their principal;
2. **Associates of law firms** owe a duty not to individually benefit while at a law firm contrary to the best interest of the law firm;
3. **Attorneys** owe a duty to their clients to put their client's interest before their own;
4. **Class Representatives** in a class action lawsuit owe a duty to represent the entire class and not benefit themselves at the expense of the class members;
5. **Condominium Board Members** owe a duty to all of the condominium owners;
6. **Corporate Officers** owe a duty not to place their own interests before that of the corporation;
7. **Employees** owe a duty to act in the best interest of the employer and they must not personally benefit from actions that penalize their employer;

8. **Executors and Trustees** owe a duty to the beneficiaries of the estate/trust to account for all of the assets and not to personally benefit at the expense of the estate/trust;
9. **Joint Venturers** owe a duty to all of the other joint venturers not to personally benefit at the expense of the joint venture;
10. The **Executive Mineral Rights Holder** has a duty not to personally benefit greater than any other of the mineral rights holders;
11. **Partners in a Partnership** have a duty to the other partners not to do business which conflicts with the partnership and not to personally benefit at the expense of the partnership;
12. The **Holder of a Power of Attorney** has a duty to the person who granted the power of attorney not to self deal with any of the assets;
13. **Securities Brokers** have a duty to competently do the work for any persons for whom they accept the task of purchasing securities. If the broker provides financial advice, then the broker has the duty not to personally benefit at the expense of the customer without fully advising the customer of the benefits being paid to the broker;
14. **Spouses** have a duty to one another to not personally benefit at the expense of the community or the other spouse; and
15. **Taxpayers** who are holding money due to be paid to a local, state or federal government have a duty to properly turn those funds to the government, such as sales tax revenues held by a merchant.

Presentation Available

As you can see, there are many types of fiduciaries. If you, your employer or your professional organization would like to know more about fiduciary duties and how they affect family law including divorce and community property issues, contact my office to schedule a one-hour continuing education presentation for your group.

If you, your client, friend or family member has a family law issue, please call us.