

**FIDUCIARY DUTY OF AGENT TO PRINCIPAL
UNDER TEXAS LAW**

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Fiduciary Duty of Agent to Principal Under Texas Law

I. Fiduciary Duty Generally

A principal-agent relationship is a formal fiduciary relationship under Texas law. *Homoki v. Conversion Services, Inc.*, 717 F.3d 388 (5th Cir. 2013) (applying Texas law). In *Kinzbach Tool Co. v. Corbett-Wallace Corp.*, 138 Tex. 565, 160 S.W.2d 509 (1942), the Texas Supreme Court held an employee to a fiduciary standard in a transaction on behalf of the employer. In that case, the supreme court explained the concept of a fiduciary relationship as follows:

The term ‘fiduciary’ is derived from the civil law. It is impossible to give a definition of the term that is comprehensive enough to cover all cases. Generally speaking, it applies to any person who occupies a position of peculiar confidence towards another. It refers to integrity and fidelity. It contemplates fair dealing and good faith, rather than legal obligation, as the basis of the transaction. The term includes those informal relations which exist whenever one party trusts and relies upon another, as well as technical fiduciary relations.

Kinzbach Tool Co., 160 S.W.2d at 512-13.

The Texas Supreme Court expanded on fiduciary duties in the principal-agent context in *Johnson v. Brewer & Pritchard, P.C.*, 73 S.W.3d 193 (Tex. 2002) as follows:

‘The agreement to act on behalf of the principal causes the agent to be a fiduciary, that is, a person having a duty, created by his undertaking, to act primarily for the benefit of another in matters connected with his undertaking. Among the agent’s fiduciary duties to the principal is the duty to account for profits arising out of the employment, the duty not to act as, or on account of, an adverse party without the principal’s consent, the duty not to compete with the principal on his own account or for another in matters relating to the subject matter of the agency, and the duty to deal fairly with the principal in all transactions between them.’

73 S.W.3d at 200 (quoting RESTATEMENT (SECOND) OF AGENCY § 13, cmt. a (1958)).

Texas Pattern Jury Charges describes the fiduciary duty of an agent as requiring the agent to comply with the following:

1. The transaction[s] in question [was/were] fair and equitable to the principal; and
2. the agent made reasonable use of the confidence that the principal placed in the agent; and
3. the agent acted in the utmost good faith and exercised the most scrupulous honesty toward the principal; and

4. the agent placed the interests of the principal before the agent's own and did not use the advantage of the agent's position to gain any benefit for the agent at the expense of the principal; and
5. the agent fully and fairly disclosed all important information to the principal concerning the transaction[s].

State Bar of Texas, *Texas Pattern Jury Charges: Business* PJC 104.2, 104.3 (2014).

II. Agent's Duty of Loyalty

The Restatement (Second) of Agency describes the agent's fiduciary duty of loyalty in general terms as follows: "Unless otherwise agreed, an agent is subject to a duty to his principal to act solely for the benefit of the principal in all matters connected with his agency." RESTATEMENT (SECOND) OF AGENCY § 387 (1958).¹ The Texas Supreme Court has relied on this provision of the Restatement (Second) to describe the fiduciary duty of an agent under Texas common law. *Johnson v. Brewer & Pritchard, P.C.*, 73 S.W.3d 193, 200 (Tex. 2002). Sections 388-398 of the Restatement (Second) address more specific aspects of this general rule, including the duty to account for profits arising out of employment, acting as or for an adverse party without the principal's consent, competition as to the subject matter of the agency, and acting for one with conflicting interests. See RESTATEMENT (SECOND) OF AGENCY §§ 388-394 (1958).² The Texas Supreme Court has acknowledged these more specific aspects of the agent's fiduciary duty to act for the benefit of the principal. See *Johnson*, 73 S.W.3d at 200.

A. Duty of Full Disclosure

A fiduciary has a duty to deal openly and make full disclosure to the party with whom the fiduciary stands in such relationship. *Kinzbach Tool Co. v. Corbett-Wallace Corp.*, 138 Tex. 565, 573, 160 S.W.2d 509, 513 (1942); see also *Jordan v. Lyles*, 455 S.W.3d 785, 792 (Tex. App.—Tyler 2015, no pet.) (stating that fiduciary owes principal a strict duty of good faith and candor, as well as the general duty of full disclosure respecting matters affecting the principal's interest, and holding that attorney in fact who assisted her principal in preparing paperwork naming attorney in fact as beneficiary of annuities and conferring survivorship rights in bank account failed to show that she discussed the transactions with her principal and informed him of all material facts, and thus failed to meet her burden to show that she did not breach her fiduciary duty to her principal); *Bright v. Addison*, 171 S.W.3d 588, 597 (Tex. App.—Dallas 2005, pet. dismissed) (stating that fiduciary has a duty to make full and accurate confession of all the fiduciary's activities, transactions, profits, and mistakes and holding that investors' attorney breached his fiduciary duty to investors by failing to disclose to investors the availability of a business opportunity to operate a casino until after the attorney had already begun managing the casino himself and investors learned about the opportunity

¹The corollary to this provision in the most recent Restatement of Agency states: "An agent has a fiduciary duty to act loyally for the principal's benefit in all matters connected with the agency relationship." RESTATEMENT (THIRD) OF AGENCY § 8.01 (2006).

²The most recent Restatement of Agency sets forth similar specific duties of loyalty. See RESTATEMENT (THIRD) OF AGENCY §§ 8.02-8.06 (2006).

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