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**The Traditional Role of Fiduciary Duty in the  
Corporation**

**(Excerpted from Douglas K. Moll & Robert A.  
Ragazzo, Closely Held Corporations (LexisNexis  
2015))**

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**Chapter 6 The Traditional Role of Fiduciary Duty**

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**Synopsis**

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## 6.01 The Purpose of Fiduciary Duties; To Whom are Duties Owed; Traditional Remedies

### The Purpose of Fiduciary Duties

In previous chapters, the powers possessed by directors and officers were examined.<sup>1</sup> With power, of course, comes responsibility. Not surprisingly, therefore, directors and officers owe fiduciary duties to the corporations they serve.<sup>2</sup> In general, fiduciary duties are designed to

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<sup>1</sup> See Section 2.01[A][2].

<sup>2</sup> See, e.g., *Gearhart Indus., Inc. v. Smith Int'l, Inc.*, 741 F.2d 707, 719 (5th Cir. 1984) (noting that “the fiduciary obligations of corporate officers are often identical to those of directors”); *Gantler v. Stephens*, 965 A.2d 695, 708–09 (Del. 2009) (“In the past, we have implied that officers of Delaware corporations, like directors, owe fiduciary duties of care and loyalty, and that the fiduciary duties of officers are the same as those of directors. We now explicitly so hold.” (footnote omitted)); *Newton v. Hornblower, Inc.*, 582 P.2d 1136, 1146 (Kan. 1978) (“Officers and directors of a corporation occupy a strict fiduciary relationship with respect to both the corporation and its stockholders. The same fiduciary standard applies as between directors.”); *Zakibe v. Ahrens & McCarron, Inc.*, 28 S.W.3d 373, 382 (Mo. Ct. App. 2000) (noting that “[i]t is well-established that corporate officers and directors occupy a fiduciary relation to the corporation and to the stockholders”); *Trieweiler v. Sears*, 689 N.W.2d 807, 830 (Neb. 2004) (“An officer or director of a corporation occupies a fiduciary relation toward the corporation and its stockholders and is treated by the courts as a trustee.”); *Leavitt v. Leisure Sports Inc.*, 734 P.2d 1221, 1224 (Nev. 1987) (stating that officers and directors owe fiduciary duties); *Chiles v. Robertson*, 767 P.2d 903, 911 (Or. Ct. App. 1989) (“The majority shareholder of a close corporation owes the minority fiduciary duties of loyalty, good faith, fair dealing and full disclosure. Directors and senior executive officers of all corporations owe similar duties to the corporation.”); see also *Northeast Harbor Golf Club, Inc. v. Harris*, 661 A.2d 1146, 1148 (Me. 1995) (“Corporate officers and directors bear a duty of loyalty to the corporations they serve.”); *Geller v. Allied-Lyons PLC*, 674 N.E.2d 1334, 1336 (Mass. App. Ct. 1997) (“Senior executives are considered to be corporate fiduciaries and to owe their company a duty of loyalty.”); *Gen. Dynamics v. Torres*, 915 S.W.2d 45, 49 (Tex. App. 1995) (stating that “[n]early everywhere, and certainly in Texas, it is well established that officers of a corporation . . . have a strict fiduciary obligation to their corporation,” including a duty of loyalty); note 13 (stating that the fiduciary duty of care is owed by both directors and officers); cf. *Today Homes, Inc. v. Williams*, 634 S.E.2d 737, 744–45 (Va. 2006) (“After March 13th, Williams was under no fiduciary duty to [the corporation] because she was no longer an officer.”); Section 6.03[C] (discussing the resignation of a fiduciary and noting that resignation does not necessarily eliminate the possibility of liability).

The corporation itself, however, does not owe any fiduciary duties. See, e.g., *Burcham v. Unison Bancorp, Inc.*, 77 P.3d 130, 146 (Kan. 2003) (“The plaintiffs have not cited any Kansas case in which the court found that a corporation owes a fiduciary duty to its stockholders; rather, it is the corporate management that owes the duty to both the corporation and its stockholders. Nor have the plaintiffs cited any Kansas case holding that a corporation may be held vicariously liable for its directors’ breach of fiduciary duty.”); see also *Arnold v. Soc’y for Sav. Bancorp, Inc.*, 678 A.2d 533, 539 (Del. 1996) (“Plaintiff has not cited a single

encourage the director or officer to always act in the corporation's best interests. Indeed, the threat of personal liability for breach of fiduciary duty is, in theory, an effort to motivate the director or officer to take his responsibilities seriously.<sup>3</sup>

In the corporations context, fiduciary duties primarily take two forms: a duty to exercise care in the management and operation of the corporation, and a duty to exercise loyalty by putting the corporation's interests before personal interests.<sup>4</sup> Under traditional doctrine, directors and officers owe these fiduciary duties to the corporation itself but not to individual shareholders.<sup>5</sup> Some cases describe fiduciary duties as duties owed to the shareholders collectively, but that is simply another way of stating that the duties run to the corporation.<sup>6</sup> An action for breach of fiduciary duty, therefore, can traditionally be brought only by the corporation, either in a direct or, more commonly, in a derivative action.<sup>7</sup> In modern closely held corporation disputes, however, this conception has largely changed, as individual shareholders in most jurisdictions are now able to assert oppression and/or breach of fiduciary duty claims on their own behalf (rather than on behalf of the corporation or the shareholders collectively) for actions by the controlling group that harm them personally.<sup>8</sup>

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case in which Delaware courts have held a corporation directly liable for breach of the fiduciary duty of disclosure. Fiduciary duties are owed by the directors and officers to the corporation and its stockholders. This Court has stated: 'The only defendant is the corporate entity ... so there are no fiduciary duty claims.' " (quoting *Gaffin v. Teledyne, Inc.*, 611 A.2d 467, 472 (Del. 1992)); *cf. id.* at 540 (rejecting the notion of vicarious liability for a corporation based on the directors' breach of fiduciary duty: "Holding the corporation vicariously liable for the directors' breach of a fiduciary duty would be flatly inconsistent with the rationale of vicarious liability since it would shift the cost of the directors' breach from the directors to the corporation and hence to the shareholders, the class harmed by the breach." (internal quotation omitted)).

<sup>3</sup> While compliance with corporate "best practices" may demonstrate that a director or officer is taking his responsibilities seriously, the failure to comply with such practices does not automatically result in liability for breach of fiduciary duty. *See, e.g., Brehm v. Eisner*, 746 A.2d 244, 256 (Del. 2000) ("All good corporate governance practices include compliance with statutory law and case law establishing fiduciary duties. But the law of corporate fiduciary duties and remedies for violation of those duties are distinct from the aspirational goals of ideal corporate governance practices. Aspirational ideals of good corporate governance practices for boards of directors that go beyond the minimal legal requirements of the corporation law are highly desirable, often tend to benefit stockholders, sometimes reduce litigation and can usually help directors avoid liability. But they are not required by the corporation law and do not define standards of liability.").

<sup>4</sup> *See, e.g., Norlin Corp. v. Rooney, Pace, Inc.*, 744 F.2d 255, 264 (2d Cir. 1984) (describing the two duties); *see also* Sections 6.02 (discussing the duty of care), 6.03 (discussing the duty of loyalty).

<sup>5</sup> *See, e.g., Schautteet v. Chester State Bank*, 707 F. Supp. 885, 888 (E.D. Tex. 1988) ("Officers and directors owe fiduciary duties only to the corporation. Therefore, [a minority shareholder] has no individual fiduciary right to enforce against any officer or director of [the company]." (citations omitted)); Section 7.01[B][2] (citing cases for the proposition that fiduciary duties conventionally run to the corporation but not to individual shareholders).

<sup>6</sup> *See, e.g., Faour v. Faour*, 789 S.W.2d 620, 621–22 (Tex. App. 1990) ("A corporate officer owes a fiduciary duty to the shareholders collectively, i.e. the corporation, but he does not occupy a fiduciary relationship with an *individual* shareholder, unless some contract or special relationship exists between them in addition to the corporate relationship.").

<sup>7</sup> A derivative action is a lawsuit brought by a shareholder on behalf of the corporation itself. *See* Chapter 9 (discussing derivative suits).

<sup>8</sup> *See* Sections 7.01[D][1][a]–[b] (discussing dissolution-for-oppression actions and related breach of fiduciary duty claims); *see also Byelick v. Vivadelli*, 79 F. Supp. 2d 610, 623–25 (E.D. Va. 1999) (noting

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