

The Fundamentals of Fiduciary Duty

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Fiduciary Duties in the Agency Context

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General Nature of a Fiduciary Relationship

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. v. Corbett-Wallace Corp., 138 Tex. 565, 160 S.W.2d 509, 512-13 (1942)

Agency is a Formal (Technical) Fiduciary Relationship

- Restatement (Third) of Agency § 1.01
 - Agency is the **fiduciary** relationship that arises when one person (a "principal") manifests assent to another person (an "agent") that the agent shall act on the principal's behalf and subject to the principal's control, and the agent manifests assent or otherwise consents to act.

The agency fiduciary relationship is a "one-way" street: an agent owes the principal fiduciary duties, but the principal does not owe the agent fiduciary duties.

Examples of Agents (Labels Do Not Control)

- Sales representative (of seller)
- Purchasing agent (of buyer)
- Attorney-in-fact (of principal/grantor of power of attorney)
- Attorney (of client)
- Law firm associate (of firm)
- Employee? (Restatement characterizes employees as agents, but Texas Supreme Court has indicated that not every employee automatically owes employer fiduciary duties—see *Johnson v. Brewer & Pritchard*)

Agent's Fiduciary Duties

As a fiduciary, an agent owes to the principal a general duty of loyalty. The Texas Supreme Court has relied on the Restatement (Second) of Agency in describing the agent's fiduciary duty 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.

Johnson v. Brewer & Pritchard, P.C., 73 S.W.3d 193 (Tex. 2002)

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