

Ethics In Real Estate Practice

**Mortgage Lending Institute
Continuing Legal Education Program**

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Fiduciary Duty

- As an attorney, as a matter of law, you owe your client a fiduciary duty.
- This fiduciary duty is one of the highest duties found in the law.

The pattern jury charge instruction that will be submitted to the jury on breach of fiduciary duty is as follows:

JURY QUESTION

Did the defendant lawyer comply with his fiduciary duty to the client?

As the client's attorney, the attorney owed a fiduciary duty to the client. To prove the attorney complied with his duty, the attorney must show:

- 1) the transaction in question was fair and equitable to the client;
- 2) the attorney made reasonable use of the confidence that the client placed in the attorney;
- 3) the attorney acted in the utmost good faith and exercised the most scrupulous honesty toward the client;
- 4) the attorney placed the interest of the client before the attorney's own interest, did not use the advantage of the attorney's position to gain any benefit for himself at the expense of the client, and did not place himself in any position where his self interest might conflict with his obligations as a fiduciary; and
- 5) the attorney fully and fairly disclosed all important information to the client concerning the transaction.

Answer: _____

If a client sues a lawyer for breach of fiduciary duty:

- 1) the client can seek all damages proximately caused by the lawyer's breach of fiduciary duty; or
- 2) the client can seek a forfeiture of some or all of the attorney's fees paid to the lawyer.

See Burrow v. Arce, 997 S.W.2d 229 (Tex. 1998).



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