

FIDUCIARY DUTIES AND LLCs

Cliff Ernst

McGinnis Lochridge LLP

Austin

John C. Ale

Retired Attorney and Arbitrator

Houston

UTCLE
33RD ANNUAL LLCs, LPS AND PARTNERSHIPS
JULY 11-12, 2024

1

What Is a Fiduciary?

At common law:

- Someone who is charged with caring for or managing the property of another
- Classic examples include
 - Trustees
 - Partners
 - Corporate officers and directors
 - Agents

2

2

Texas Types of Fiduciary Duties

- Formal – exist as a matter of law
- Informal – arise out of special, confidential relationships
 - “a moral, social, domestic or purely personal relationship of trust and confidence”*
 - Not found lightly—more than mere business or social familiarity**
- Contractual
 - Certificate of formation
 - Corporate bylaws and shareholder agreements
 - Partnership and LLC company agreements

* *Meyer v. Cathey*, 167 S.W.3d 327, 331 (Tex. 2005) (internal quotation marks and citations omitted).

** *Crim Truck & Tractor Co. v. Navistar International Transportation Corp.*, 823 S.W.2d 591 (Tex. 1992) (not every long, cordial relationship gives rise to duties).

Sources of Formal Fiduciary Duties

- Common or judge-made law
 - Trustees
 - Corporate officers and directors
 - Agents
- Statutes—for partnerships
 - TBOC §§ 152.204-.206 for partners in general partnerships
 - TBOC § 153.152 applies general partnership rules to general partners of limited partnerships
 - Generally reflect corporate law principles

Where Do LLCs Fit In?

- TBOC and predecessors do not mention fiduciary duties for LLC members or managers
- Early cases analogized to corporations—or mistook LLCs for corporations!—and applied corporate principles
- Managers or members with management authority are agents of the LLC, TBOC § 101.254(a)—agents owe fiduciary duties
- TBOC permits company agreements to expand or restrict duties, TBOC § 101.401
 - Implies duties exist
 - *But what are they?*

5

5

Classic Corporate Duties

- Care – ordinarily prudent person under similar circumstances
 - Business judgment rule—courts will not find “liability for acts that are within the honest exercise of [officers’ and directors’] business judgment and discretion” and not “mere mismanagement, neglect, or abuse of discretion”*
 - Reasonable reliance on management, experts, internal reports, etc.
- Loyalty
 - No self-dealing
 - No competition/usurping business opportunities
- Obedience
 - No ultra vires acts
 - Rarely arises/typically broad scope of entity powers

* *Sneed v. Webre*, 465 S.W.3d 169, 173, 186 (Tex. 2015).

6

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Fiduciary Duties and LLC's

First appeared as part of the conference materials for the
33rd Annual LLCs, LPs and Partnerships session
"Fiduciary Duties and LLC's"