

# Understanding Fiduciary Duty: Obligations, Relationships, and Breaches

Understanding a fiduciary duty is crucial, as it defines the relationship between parties and their duties and responsibilities. In this article, we will delve into the definition of fiduciary duty, when it arises, the nature of the obligation, and how to resolve a breach of fiduciary duty. As a solicitor and construction lawyer with over a decade of experience, I will provide insights and examples that are easy to understand for homeowners and builders alike.

## What is a Fiduciary Duty?

A fiduciary duty is a legal obligation where one party, known as the fiduciary, is entrusted to act for the benefit of another party, known as the principal or beneficiary. The relationship between the parties is based on trust, good faith, and confidence. The fiduciary is expected to act in the best interests of the principal, and not to make any personal profit or benefit without the consent of the principal.

The fiduciary duty is different from other obligations, such as contractual obligations, because it arises from the relationship between the parties and not from a written agreement. The fiduciary is held to a higher standard of care than in other relationships, and any breach of the duty may result in legal consequences.

The parties involved in a fiduciary relationship may include company directors, shareholders, partners, agents, trustees, lawyers, doctors, employers, employees, guardians, parents, and spouses. The duties and responsibilities of a fiduciary may vary depending on the specific relationship and circumstances, but generally, the fiduciary must act with loyalty, honesty, and full disclosure, and avoid any conflicts of interest.

It is essential to understand the nature of fiduciary duty, as any breach may result in legal action and monetary penalties. By upholding the fiduciary duty, parties involved in a fiduciary relationship can establish trust and promote the best interests of both parties.

## When Does Fiduciary Duty Arise?

A fiduciary relationship is one that requires the fiduciary to act in the best interests of the principal or beneficiary. This relationship arises when one party has placed trust and confidence in the other party to act in their best interests.

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## How Does Fiduciary Duty Arise?

A fiduciary duty may arise out of both contractual and non-contractual undertakings. A fiduciary duty in a contractual relationship arises where the parties have explicitly agreed to act in the interests of each other. Non-contractual relationships may also give rise to a fiduciary duty where one party has placed trust and confidence in the other party to act in their best interests.

Examples of non-contractual relationships that give rise to fiduciary duties include:



where reasonable expectations are formed from either party, depending on the circumstances;



where a party is given powers solely for the purpose of promoting the interests of another and not of himself; or



where a party's exercise of power or discretion practically and/or legally affects another's interests.

## Examples of Fiduciary Relationships

A fiduciary relationship can arise in various contexts, and it is essential to understand the different types of fiduciary relationships. Some examples include:

- Company directors to their company and shareholders
- Partners in a formal partnership
- Individuals exercising powers of attorney
- Agents to their principal
- Trustees to a beneficiary
- Lawyers to clients
- Doctors to patients
- Employers to employees

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- Guardians to wards
- Parents to children
- Spouses to each other

Each of these relationships involve a fiduciary duty to act in the best interests of the beneficiary or principal, with loyalty, honesty, and good faith. Understanding the different types of fiduciary relationships can help identify situations where a breach of fiduciary duty may occur.

## Nature of Fiduciary Obligation

A fiduciary obligation is a legal obligation that requires the fiduciary to act in good faith and with the utmost loyalty toward the beneficiary or principal.

The duty of loyalty is a central aspect of the fiduciary relationship and requires that the fiduciary act solely in the best interests of the beneficiary or principal. Breaching this duty can result in serious consequences to the fiduciary, including legal liability and damages.

The fiduciary is held to a high standard of honesty and must provide full disclosure of any potential conflicts of interest. The fiduciary must not obtain any personal benefit at the expense of the principal and must act in good faith for the advancement of the principal's interests. If a breach of the fiduciary duty occurs, the fiduciary may be held accountable to the principal for any benefit or gain received without the principal's consent.

Consequences of breaching a fiduciary duty can include monetary penalties for direct damages, indirect damages, and coverage of legal fees. The Court may also cause industry discrediting, loss of licence, or removal from service of the fiduciary. It is important for the fiduciary to take the duty of loyalty seriously and act in the best interests of the beneficiary or principal at all times.

## Breach of Fiduciary Duty

A breach of fiduciary duty happens when a fiduciary fails to act in the best interest of their client, or if they use their position for personal gain.

A breach can stem from negligence, unlawful use of funds, or failure to provide important information to the principal that could lead to misunderstandings, misinterpretation, or misguided advice. Thus, it is of utmost importance that the fiduciary identifies and discloses any potential conflicts of interest to the principal.

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## Elements of a Breach in Fiduciary Duty

To establish a breach of fiduciary duty, four elements must be present: duty, breach, damages, and causation.

Below is a table summarising the elements of a breach of fiduciary duty:

<b>Element of Breach of Fiduciary Duty</b>	<b>Definition</b>
Duty	There is an existing fiduciary relationship between the parties.
Breach	A breach of the fiduciary duty occurred.
Damages	The principal incurred or suffered damages by reason of the breach of the fiduciary duty.
Causation	There must be a direct association of the damages incurred with the breach of fiduciary duty.

## Examples of Fiduciary Duty Breach

Examples of a breach of fiduciary duty may include a company director facilitating the acquisition of another business venture despite it not being in the company's best financial interest, or an individual buying shares for private gain based on confidential information they have received in a fiduciary capacity.

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A director of the company facilitated the acquisition of another business venture, despite this not being in the company's best financial interests.



An individual bought shares for private gain based on confidential information they have received during a fiduciary capacity.



A director caused a company to sell shares to a different company controlled by the same director at a significantly lesser value and with no independent valuation.



A director carelessly approved a certain decision and did not take time to carry out the reasonable amount of due diligence for it, which is part of his fiduciary obligation.



A fiduciary took advantage of a business opportunity that is intended for another party.

The consequences of a breach of fiduciary duty can be severe, ranging from monetary penalties and loss of licence to industry discrediting and removal from service.

## Resolving a Breach of Fiduciary Duty

When a breach of fiduciary duty occurs, there are several remedies available to the injured party. The most common remedies that can be used to resolve disputes include rescission, damages, account of profits, and injunctions.

- Rescission involves the cancellation of the transaction or agreement that led to the breach.
- Damages are monetary compensation for losses suffered as a result of the breach. An account of profits involves the recovery of any profits made by the fiduciary as a result of the breach.
- An injunction is an order requiring the fiduciary to do or not do something.

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Examples of remedies for a breach of fiduciary duty include a shareholder suing a director for self-dealing or a beneficiary taking legal action against a trustee for a breach of duty. It is essential to seek legal advice if you believe a breach of fiduciary duty has occurred. An experienced lawyer can help you assess your options and determine the best course of action to resolve the issue.

## How Can Contracts Specialist Help You Move Forward

Fiduciary duty is a vital legal obligation that arises in certain relationships, and breach of this duty can have severe consequences. If you suspect a breach of fiduciary duty, seek legal advice immediately to protect your interests and ensure that your rights are safeguarded.

As your trusted building and construction lawyer, Contracts Specialist ensures that we understand, uphold and observe our obligations with utmost honesty and good faith. We'll put your interests above our own and will provide full disclosure of the conflicts that may arise when dealing with your situation.

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