

## What is a Fiduciary Duty?

A fiduciary duty is a legal obligation where one party (fiduciary) is given rights and powers to be exercised for the benefit of another person (principal). The party who undertakes to act for another is called the fiduciary, while the party to whom the duty is owed is the principal or the beneficiary.

## When does Fiduciary Duty arise?

A fiduciary duty arises from a relationship based on good faith, trust and confidence, and reliance on the fiduciary to exercise his discretion or expertise in acting for the benefit of the client. The purpose of the fiduciary duty is to avoid conflict and not to make any profit or gain any benefit for himself or another, without the consent of the principal or beneficiary.

## How do Fiduciary Duties arise?

Fiduciary duties may arise out of contractual (or deeds) or non-contractual undertakings, where one party assumes an express or implied obligation to act in another party's interests.

Here are examples of non-contractual undertakings out of which a fiduciary duty may arise.



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.

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## What are some examples of Fiduciary relationships?

There are several examples of relationships where fiduciary duties arise and/or exist. Here are some examples where fiduciary duties exist:

- · Company director to their company
- · Company director to shareholders
- · Partners to fellow partners in a formal partnership
- · An individual exercising powers of attorney
- · Agent to their principal
- · Trustee to a beneficiary
- · Lawyer to client
- · Doctor to patient
- · Employer to employee
- · Guardian to a ward
- · Parent to a child
- · Spouses to each other

## What is the nature of the obligation?

There are several examples of relationships where fiduciary duties arise and/or exist. Here are some examples where fiduciary duties exist:

A fiduciary is held to a high standard of honesty and full disclosure. He must not obtain any personal benefit at the expense of the principal, rather it is the duty of the fiduciary to act in good faith for the advancement of the interests of the principal. It demands loyalty between the parties.

If a fiduciary breaches its duty or obligation, he might be held accountable to the principal for any benefit or gain it received without the principal's consent. The duty imposed upon a fiduciary is strict.

The only way a fiduciary may escape liability for conduct that amounts to a breach is where the principal or beneficiary consents to such conduct. However, in some instances, even the consent of the principal or beneficiary is not enough to avoid liability.

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## When does a breach of Fiduciary Duty happen?

Breaches of fiduciary duty usually happen when the actions of a fiduciary are opposite to the interests of the principal and instead, benefit the fiduciary's interests or the interests of a third party.

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.

## Elements of a breach in Fiduciary Duty

A fiduciary relationship demands that the fiduciary upholds or puts the principal's interests above his own. Case law establishes precedents and elements for breaches of fiduciary duty.

Generally, the four essential elements of breach of fiduciary duty are duty, breach, damages, and causation. These elements must be sufficiently established by either party to prevail in its breach of fiduciary claim.



### 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.

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A successful breach of fiduciary duty lawsuits may lead to monetary penalties for direct damages, indirect damages, and coverage of legal fees. The Court may also cause industry discrediting, loss of license, or removal from service of the fiduciary.

## Examples of Fiduciary Duty breach

Examples of a breach of fiduciary duty are:



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.

## How to resolve a breach of Fiduciary Duty?

As fiduciary relationships go sour, there are various solutions potentially available. Common remedies that can be used to resolve disputes related to a fiduciary breach are:

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**INJUNCTION**

an order preventing the fiduciary from committing another breach to the suffering party.

**RESCISSION**

an order cancelling any transaction made during the breach.

**AN ACCOUNT OF PROFITS**

an order taking away any relevant gain or profits that the fiduciary acquired from the breach. The fiduciary must justify what he has received on behalf of the principal and which among the expenses are disbursed.

**EQUITABLE COMPENSATION**

an order to compensate the beneficiary for losses, with the aim of restoring the beneficiary back to the position he were in before the breach happened.

**THE IMPOSITION OF CONSTRUCTIVE**

an order that holds a fiduciary's property in trust for the benefit of the suffering party. This remedy typically happens when a fiduciary has stolen or misappropriated property, or gets a business opportunity intended for the principal.

## How Can Contracts Specialist Help You Move Forward?

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 with the conflicts that may arise when dealing with your situation.

Move forward by:

- Calling us on 02 8096 8576
- Speaking with our Building and Construction Lawyer
- Getting expert advice on your legal options

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