

# TRUST & PROBATE LITIGATION NAVIGATOR

HUTCHISON & STEFFEN  
ATTORNEYS

ISSUE 25



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Stewart Fitts is a partner practicing in the Firm's trust and probate litigation department. Stewart and other attorneys at the Firm work closely with clients' trust and estate planning professionals to maximize clients' opportunities for successful resolution of disputes.

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## BREACH OF FIDUCIARY DUTIES

The classic definition of a fiduciary is an individual who must act in the best interest of another. Often, a fiduciary manages financial or business assets of a principal. Classic examples of a fiduciary are a trustee of a trust acting on behalf of beneficiaries or a board of directors acting on behalf of its shareholders. A fiduciary relationship carries the highest duties of loyalty and fidelity under the law.

### TYPES OF FIDUCIARY RELATIONSHIPS

The most common fiduciary relationships include:

- Attorney – Client
- Partner – Partner
- Spouse – Spouse
- Agent – Principal
- Officers/Directors – Shareholders
- Trustee – Beneficiary
- Executor – Beneficiary

### ACCOUNTABILITY OF A FIDUCIARY

When a fiduciary is tasked with managing financial assets, he quickly learns, or already knows, that in today's technologically connected world it is all but impossible for either securities portfolios or financial records to

remain hidden from a principal. Due to this dramatic increase in accessible information, fiduciaries are being scrutinized as never before. However, this new age of information can enhance a fiduciary's ability to protect himself from accusations of breach of fiduciary duty, fraud, or malpractice.

In a will or trust context, a fiduciary can never have a conflict of interest. If a fiduciary duty may conflict with the fiduciary's personal interest, it is essential for the fiduciary to disclose the conflict at a minimum. If the conflict is material, it is prudent to simply find another fiduciary to act on the principal's behalf. A fiduciary can have no divided loyalties. Full fidelity to the best interests of the principal is the touchstone of a fiduciary.

Another important fiduciary concept is the no-profit rule. As a fiduciary acting for a principal, the fiduciary is expected not to personally profit from any opportunity surfacing from his fiduciary position at the expense of the principal.

### BREACH OF FIDUCIARY DUTY

To claim a breach of fiduciary duty, three elements must be met:

1 Existence of a fiduciary relationship,

2 Breach of a fiduciary duty regarding the relationship, and

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...continued.

## 3 Damages proximately caused by the breach.

However, a fiduciary can rebut any such claim by proving that there was full disclosure of the facts and the principal fully accepted the disclosed facts. Proving or disproving the existence of a fiduciary relation is factually specific in each case. In general, if a person occupies a position of trust in a relationship with another, a fiduciary relationship exists.

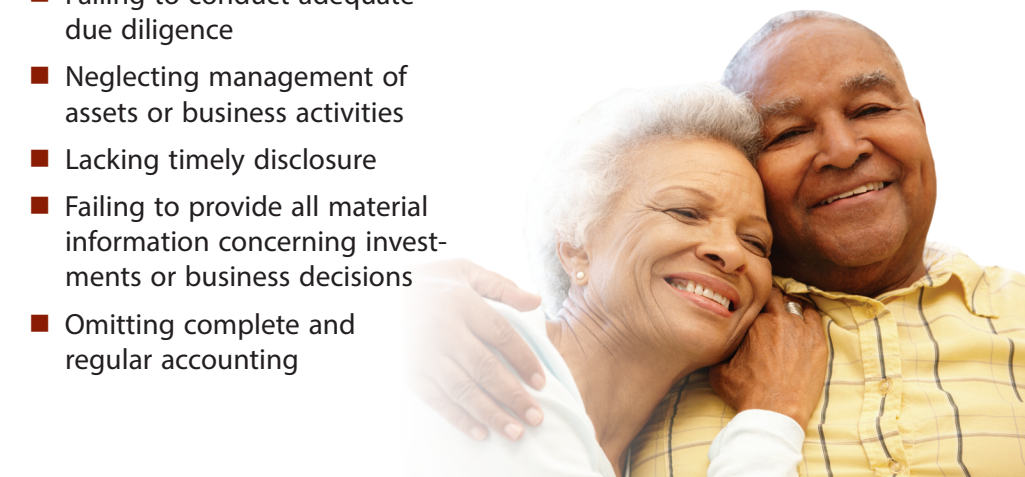
### WITHIN FIDUCIARY RELATIONSHIPS, BREACHES CAN INCLUDE:

- Usurping opportunities that could benefit the principal
- Competing with the principal's business or investment interests
- Misappropriating a principal's assets
- Failing to conduct adequate due diligence
- Neglecting management of assets or business activities
- Lacking timely disclosure
- Failing to provide all material information concerning investments or business decisions
- Omitting complete and regular accounting

## REMEDIES FOR BREACH OF FIDUCIARY DUTY

The remedy for a breach of fiduciary duty depends on each unique situation. A principal may recover compensatory and special damages, and in some cases even punitive damages, especially if the breach is due to malice or fraud. Moreover, a principal may seek an injunction from the court to stop the improper action of a fiduciary or the imposition of a constructive trust over the assets or benefits that the fiduciary wrongly acquired and rightly belonged to the principal.

The attorneys at Hutchison & Steffen are experienced and passionate about fiduciary legal matters. The Firm regularly represents fiduciaries (including trustees, executors, and professionals), principals, and beneficiaries both in and out of court involving allegations of breach of fiduciary duties. ■



*Situations involving family members can be trying and emotionally charged. The evidence required either proving or disproving a claim of undue influence turns on the quality of evidence and experienced legal counsel. The attorneys at Hutchison and Steffen are experienced in, and effective at, evaluating and pursuing vigorously a client's legal rights under a will and are effective in litigating and resolving issues regarding situations of undue influence. Cases run the full spectrum from million-dollar will contests to smaller family disputes.*

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Constitutional Law  
Construction Law  
Corporate & Commercial Law  
Election, Campaign, & Political Law  
Employment & Labor Law  
Family Law  
Gaming  
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Human Resources Support  
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