

What Exactly Are the Duties of a Fiduciary?

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I. When do Fiduciary Relationships Arise?

Fiduciary duties arise out of a special relationship involving trust and confidence. *Carlson v. Sala Architects, Inc.*, 732 N.W.2d 324, 330-31 (Minn. Ct. App. 2007). They also arise when trust and confidence in one party results in superiority and influence over another party. *Toombs v. Daniels*, 361 N.W.2d 801, 809 (Minn. 1985). When one party relies on the superior knowledge of another, fiduciary relationships have also been found. *See e.g. Norwest Bank Hastings v. Clapp*, 394 N.W.2d 176 (Minn. Ct. App. 1986). Finally, fiduciary relationships arise where there is disparity in business knowledge and invited confidence. *Toombs*, 361 N.W.2d at 809. Note, however, that a fiduciary relationship does not arise simply because the parties share a long acquaintance or because one has faith and confidence in another when he/she should have known that party was representing an adverse interest. *S. Minn. Mun. Power Agency v. City of St. Peter*, 433 N.W.2d 463, 468 (Minn. Ct. App. 1986).

II. Where Are Fiduciaries' Duties Described?

Minnesota Statutes outline the fiduciary duties owed by directors of corporations (Minn. Stat. Ch. 302A "Minnesota Business Corporation Act"), partners of partnerships (Minn. Stat. Ch. 321 "Uniform Limited Partnership Act" and Minn. Stat. Ch. 323A "Uniform Partnership Act"), managers and governors of limited liability companies (Minn. Stat. Ch. 322B "Minnesota Limited Company Act"), and residential real estate brokers (Minn. Stat. Ch. 82) Minnesota common law has outlined the various other relationships where fiduciary duties arise.

III. Recognized Fiduciary Relationships

The Minnesota legislature and courts have recognized the existence of fiduciary duties in the following contexts:

1. Directors and Officers of Corporations¹
2. Partners of Partnerships²

¹ Minn. Stat. § 302A.251, subd. 1.

² *Midland Nat. Bank of Minneapolis v. Perranoski*, 299 N.W.2d 404, 413 (Minn. 1980); *Appletree Square I Limited Partnership v. Investmark, Inc.*, 494 N.W.2d 889, 892 (Minn. Ct. App. 1993).

3. Managers and Governors of Limited Liability Companies³
4. Voting Shareholders in Closely Held Corporations⁴
5. Attorneys to their Clients⁵
6. Agents to their Principals⁶
7. Guardians to their Wards⁷
8. Insurers to their Insureds⁸
9. Trustees to Trust Beneficiaries⁹
10. Real Estate Brokers to their Principals¹⁰

IV. What Exactly Are the Duties of a Fiduciary?

A fiduciary's duties depend on the type of fiduciary relationship that exists.

A. Corporate Directors and Officers

Corporate directors and officers are fiduciaries to the corporation and its stockholders. *See e.g., Westgor v. Grimm*, 318 N.W.2d 56, 58 (Minn. 1982). As detailed under Minn. Stat. Ch. 302A, the Minnesota Business Corporation Act ("MBCA"), directors and officers owe a duty of care and a duty of loyalty to the corporation and its stockholders. Minn. Stat. § 302A.251, subd. 1 (directors), Minn. Stat. § 302A.361 (officers).

1. Duty of Care

The duty of care involves discharging one's duties with the care an ordinary prudent person in a like position would exercise under similar circumstances. Minn. Stat. § 302A.251, subd. 1 (directors); Minn. Stat. § 302A.361 (officers). The MBCA also requires directors and officers to act in the best interests of the corporation. *Id.* Minnesota courts have rarely imposed liability on corporate directors or officers solely for breaches of the duty of care and will not do

³ Minn. Stat. § 332B.69 (managers), Minn. Stat. § 322B.663 (governors).

⁴ *Berremann v. West Pub. Co.*, 615 N.W.2d 362, 367 (Minn. Ct. App. 2000); *Pedro v. Pedro*, 489 N.W.2d 798, 801 (Minn. Ct. App. 1992).

⁵ *STAR Centers, Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002).

⁶ *Dahl v. Charles Schwab & Co., Inc.*, 545 N.W.2d 918 (Minn. 1996); *PHM Properties v. Nichols*, 263 N.W.2d 799, 801 (Minn. 1978).

⁷ *Ashton v. Thompson*, 18 N.W. 918, 923 (Minn. 1884). *Welfare of B.U. and R.U.*, No. CX-89-1457, 1990 WL 13423, at *2 (Minn. Ct. App. Feb. 20, 1990) (Guardian ad Litem).

⁸ *Kissoondath v. U.S. Fire Ins. Co.*, 620 N.W.2d 909, 914-15 (Minn. Ct. App. 2001).

⁹ *Commercial Assoc., Inc. v. Work Connection, Inc.*, 712 N.W.2d 772, 779 (Minn. Ct. App. 2006).

¹⁰ Minn. Stat. § 82.68.

so absent fraud, collusion, or like misconduct. *Warner v. E.C. Warner, Co.*, 33 N.W.2d 721, 726 (Minn. 1948).

2. Duty of Loyalty

The duty of loyalty encompasses discharging one's duties in good faith and in a manner reasonably believed to be in the best interests of the corporation. *Id.*; see also *Keough v. St. Paul Milk Co.*, 285 N.W.2d 809, 823 (Minn. 1939). "Good faith" is defined as honesty in fact in the conduct of the act or transaction concerned. Minn. Stat. § 302A.011, subd. 13. Generally, the duty of loyalty prohibits directors and officers from assuming positions in conflict with interests of the corporation and/or from engaging in self-dealing by usurping corporate opportunities. See *Dedrick v. Helm*, 14 N.W.2d 913, 919 (Minn. 1944)(directors and officers cannot serve their own personal interests at the expense of the corporation and its stockholders); *Matter of Villa Maria, Inc.*, 312 N.W.2d 921, 922 (Minn. 1981)(officers and directors may not appropriate to themselves a business opportunity which belongs to the corporation).

Minn. Stat. § 302A.255, subd. 1 addresses director conflict of interest transactions and allows a director to engage in transactions with the corporation in which it has a financial interest as long as the transaction is fair and reasonable to the corporation, disclosed to the shareholders and board of directors, and approved by 2/3 of the voting uninterested shareholders or unanimous affirmative vote of all the shareholders, and approved or ratified by the board of directors. Minn. Stat. § 302A.255, subd. 1.

3. The MBCA Treats Directors and Officers Differently in 3 Contexts

First, in exercising their duties, directors are entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data from key individuals including, *inter alia*, counsel, public accountants, and officers and employees of the corporation who are reasonably believed to be reliable and competent in the matters presented. Minn. Stat. § 302A.251, subd. 2. There is no similar provision for officers under the MBCA.

Second, directors who perform their duties of loyalty and care are not liable solely by reason of being or having been a director. Minn. Stat. § 302A.251, subd.1. There is no similar provision for officers. Finally, a director's personal liability to the corporation or its stockholders for breach of its fiduciary duty of care may be eliminated or limited in the corporation's articles. Minn. Stat. § 302A.251, subd. 4. There is no similar provision for managers.

B. Partners

Partners in a partnership owe two fiduciary duties to the other partners and the partnership: the duty of loyalty and the duty of care. See Minn. Stat. 323A.0404 (partnerships and limited liability partnerships); Minn. Stat. § 321.0408 (limited partnerships). In limited partnerships, only general partners owe fiduciary duties. Limited partners have no fiduciary duties to the limited partnership or other partners solely by reason of being a limited partner. Minn. Stat. § 321.0305(a). All partners owing fiduciary duties must discharge their duties consistently with the obligation of good faith and fair dealing. Minn. Stat. § 321.0408(d)(limited partnerships); Minn. Stat. § 323A.0404(d) (partnerships and limited liability partnerships).

The duty of loyalty includes:

- Accounting to the partnership and holding as trustee for it any property, profit, or benefit derived by the general partner in the conduct and winding up of the partnership's activities;
- Refraining from dealing with the partnership in the conduct or winding up of the partnership's activities/business as or on behalf of a party having an interest adverse to the partnership; and
- Refraining from competing with the partnership in the conduct or winding up of the limited partnership's activities (in limited partnerships) or in the conduct of the partnership business before the dissolution of the partnership (in all other partnerships).

Minn. Stat. § 321.0408(b)(1)(limited partnerships); Minn. Stat. § 323A.0404(b)(partnerships and limited liability partnerships). The duty of care is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law. Minn. Stat. § 321.0408(c) (limited partnerships); Minn. Stat. § 323A.0404(c) (partnerships and limited liability partnerships).

Although not specifically considered a fiduciary duty, partners must also disclose material facts to each other. *Appletree*, 494 N.W.2d at 892. In limited partnerships, this disclosure requirement includes, upon demand of another partner, providing full information regarding the state of activities and financial condition of the partnership. *See* Minn. Stat. § 321.0304. In other partnerships, the disclosure duty includes providing access to the partnership's books and records and information concerning the partnership's business and affairs. *See* Minn. Stat. § 323A.0403.

C. Managers and Governors of a LLC

The standard of conduct for managers and governors of limited liability companies is the same under the Minnesota Limited Liability Company Act ("MLLCA"). *See* Minn. Stat. §§ 322B.69 (managers) and 322B.663, subd. 1 (governors). These duties are identically defined as those of directors and officers under the MBCA. *See* Minn. Stat. § 302A.251, subd. 1 (directors), Minn. Stat. § 302A.361 (officers). Managers and governors owe a duty of care and a duty of loyalty to the limited liability company and its members. Minn. Stat. §§ 322B.69 (managers) and 322B.663, subd. 1 (governors). The duty of care includes acting with the care an ordinarily prudent person in a like position would exercise under similar circumstances. *Id.* The duty of loyalty requires managers and governors to discharge the duties of their positions in good faith and in a manner reasonably believed to be in the best interest of the limited liability company. *Id.*

1. The MLLCA Treats Managers and Governors Differently in 3 Contexts

Similar to the treatment of directors and officers of corporations under the MBCA, managers and governors are treated differently under the MLLCA. First, in exercising their duties, governors are entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data from key individuals including, *inter alia*, counsel,

public accountants, and other managers, governors and employees who are reasonably believed to be reliable and competent in the matters presented. Minn. Stat. § 322B.663, subd. 4. There is no similar MLLCA provision governing managers.

Second, governors who perform their duties of loyalty and care are not liable by reason of being or having been a governor of the limited liability company. Minn. Stat. § 322B.663, subd. 1. The MLLCA has no comparable provision for managers.

Finally, a governor's personal liability to the LLC or its members for breach of its fiduciary duty of care can be eliminated or limited in the articles of organization or in a member control agreement. Minn. Stat. § 322B.663, subd. 4. There is no similar provision for managers.

D. Voting Shareholders in Closely Held Corporations

A closely held corporation is a corporation with no more than 35 shareholders. Minn. Stat. § 302A.011, subd. 6(a). Generally, closely held corporations also have no ready market for corporate stock and have active shareholder participation in the business. *Berreman v. West Pub. Co.*, 615 N.W.2d 362, 367 (Minn. Ct. App. 2000). Voting shareholders in closely held corporations owe fiduciary duties, similar to those owed by partners in a partnership, to the other shareholders in the corporation. *Id.* at 367; *Pedro v. Pedro*, 489 N.W.2d 798, 801 (Minn. Ct. App. 1992); *Advanced Communication Design, Inc. v. Follett*, 615 N.W.2d 285, 295 (Minn. 2000)(nonvoting shareholders owe no fiduciary duties to other shareholders).

Shareholders are held to the highest standard of integrity and good faith in their dealings with each other. *Id.* at 802 (citing *Prince v. Sonneyayn*, 25 N.W.2d 468, 472 (Minn. 1946)). Further, shareholders must deal openly, honestly and fairly with the other shareholders. *Id.* (citing *Evans v. Blesi*, 345 N.W.2d 775, 779 (Minn. Ct. App. 1984)). Shareholders must also disclose material information to the other shareholders about the corporation. *Berreman*, 615 N.W.2d at 371. Finally, although not specifically deemed a fiduciary duty, those in control of closely held corporations must not act in a manner that is unfairly prejudicial to minority shareholders. *See* Minn. Stat. § 302A.751, subd 1(b)(3). If they do, the prejudiced shareholder may be entitled to equitable relief or the corporation may face dissolution. Minn. Stat. § 302A.751.

E. Attorneys

An attorney-client relationship gives rise to a fiduciary relationship. *STAR Centers, Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002). An attorney's fiduciary duty to its client include:

- Representing the client with undivided loyalty;
- Preserve client confidences; and
- Disclose material matters to clients bearing upon the representation of these obligations.

Id. at 77; *Rice v. Pearl*, 320 N.W.2d 407, 410 (Minn. 1982). The disclosure duty requires the attorney to disclose to the client information obtained that may affect the client's interest with respect to the matters entrusted to the attorney. *Id.*

F. Agents

Agency is the fiduciary relationship that results from manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and the consent by the other party to so act. *A. Gay Jenson Farms Co. v. Cargill, Inc.*, 309 N.W.2d 285, 290 (Minn. 1981)(citing Restatement (Second) of Agency § 1 (1958)). Agents must act for the benefit of the principal in all matters related to the agency relationship. *Dahl v. Charles Schwab & Co., Inc.*, 545 N.W.2d 918, 925 (Minn. 1996)(citing *Doyen v. Bauer*, 300 N.W. 451 (Minn. 1941)). Agents also owe their principal the duty of full disclosure. *PMH Properties v. Nichols*, 263 N.W.2d 799, 801 (Minn. 1978). Further, agents must exercise utmost fidelity toward the principal. *See e.g. Hopper v. Rech*, 375 N.W.2d 538 (Minn. Ct. App.1985)(citing *Carlson v. Carlson*, 363 N.W.2d 803, 805 (Minn. Ct. App. 1985)).

G. Guardian Ad Litem

A Guardian ad Litem has a duty to protect its ward and to advance the ward's best interests. *Welfare of B.U. and R.U.*, No. CX-89-1457, 1990 WL 13423, at *2 (Minn. Ct. App. Feb. 20, 1990).

H. Insurers

“An insurer owes its insured a fiduciary duty to represent the insured’s best interest and to defend and indemnify the insured.” *Kissoondath v. U.S. Fire Ins. Co.*, 620 N.W.2d 909, 914-15 (Minn. Ct. App. 2001)(citing *Short v. Dairyland Ins. Co.*, 334 N.W.2d 384, 387 (Minn. 1983)). The insurer’s duty is measured by the “good faith” standard. *Id.* at 916. To exercise good faith, the insurer must view a situation as if there were no policy limits applicable to the claim, and to give equal consideration to the financial exposure of the insured. *Id.*

I. Trustees

An individual having legal title to property that is held in trust for the benefit of another owes fiduciary duties to that beneficiary. *Commercial Assoc., Inc. v. Work Connection, Inc.*, 712 N.W.2d 772, 779 (Minn. Ct. App. 2006). If there are multiple beneficiaries to the trust, a trustee has a duty to deal impartially with the beneficiaries and must manage the trust with equal consideration for the interests of all beneficiaries. *In the Great N. Iron Ore Properties*, 263 N.W.2d 610, 621 (Minn. 1978). A trustee’s other duties include:

- Preserving the trust property;¹¹
- Keeping the trust property separate from the trustee’s own property;¹²
- Disclosing to the beneficiaries all facts pertaining to the trust;¹³
- Keeping complete and accurate records;¹⁴ and

¹¹ *See Schug v. Michael*, 245 N.W.2d 587, 592 (Minn. 1976)(citing Restatement (Second) of Trusts, §§ 175 and comment C, 176, and 179)).

¹² *Id.*

¹³ *See In re Trust of Baker*, No. C2-00-1204, 2001 WL 379927 *3 (Minn. Ct. App. Apr. 17, 2001).

¹⁴ *Bailey’s Trust v. Bailey*, 62 N.W.2d 829, 833 (Minn. 1954).

- Administering the trust solely for the benefit of the beneficiaries;¹⁵
- Dealing fairly with the beneficiaries.¹⁶

Pursuant to Minnesota Statutes, an individual trustee or a corporation having trust powers acting under wills, agreements, court orders, and other instruments, owe a duty to invest and manage trust assets prudently. *See* Minn. Stat. § 501B.151, subd. 2(a) (2007). This duty includes considering the purposes, terms, distribution requirements, and other circumstances of the trust. *Id.* It further requires the trustee to consider the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust. *Id.* at subd. 2(b). In satisfying the “prudent” standard, the trustee must exercise reasonable care, skill, and caution. *Id.* at subd. 2(a). The trustee must not invest or manage trust assets in a manner that defeats the settlor’s intent or the purposes of the trust. *See Northwest Bank Minn. North, N.A. v. Beckler*, 663 N.W.2d 571, 580 (Minn. Ct. App. 2003).

J. Real Estate Brokers

Residential real estate brokers’ duties to their principals arise out of agency principals. Brokers owe their principals the duties of good faith and loyalty. *White v. Boucher*, 322 N.W.2d 560, 564–65 (Minn. 1982). Part of the duty of loyalty requires brokers to divulge all material facts of which the broker has knowledge which could adversely and significantly affect an ordinary purchaser's use or enjoyment of the property, or any intended use of the property. Minn. Stat. § 82.68, subd. 3; *see also Magee v. Odden*, 20 N.W.2d 87, 89–90 (Minn. 1945)(broker must disclose information that might affect the client’s rights or decisions). “Knowledge” includes what the broker knew or should have known. *Baker v. Surman*, 361 N.W.2d 108, 111–12 (Minn. Ct. App. 1985). The duty to disclose also requires brokers to make full disclosure of a prospective buyer's financial status. *Fulsom v. Egner*, 79 N.W.2d 25, 30 (Minn. 1956) Further, from the outset, brokers are required by statute to set forth the type of agency relationship that will exist in a statutory agency disclosure form (i.e. seller’s broker, buyer’s brokers, subagent, dual agency broker or facilitator). *See* Minn. Stat. § 82.67.

¹⁵ *Schug v. Michael*, 245 N.W.2d 587, 591 (Minn. 1976).

¹⁶ *Id.*