



# LEGAL TIP OF THE WEEK

## YOUR FIDUCIARY DUTY

A fiduciary is a person or organization that owes to another the duties of good faith and trust. This is the highest legal duty of one party to another. It also involves being bound ethically to act in the other person's best interest.

When a licensee knowingly accepts a fiduciary duty on behalf of their client, he or she is required to act in the best interest of the principal, with the principal's needs being placed first and foremost. This is both a legal and an ethical responsibility. In reviewing the Administrative Rules, R162-2f-401a, affirmative duties required of all licensed individuals, it states that...

### An individual licensee shall:

(1) uphold the following fiduciary duties in the course of representing a principal:

- (a) loyalty, which obligates the agent to place the best interest of the principal above all other interests, including the agent's own;
- (b) obedience, which obligates the agent to obey all lawful instructions from the principal;
- (c) full disclosure, in which obligates the agent to inform the principal of any material fact the agent learns about: (i) the other party; or (ii) the transaction;
- (d) confidentiality, which prohibits the agent from disclosing, without permission, any information given to the agent by the principal that would likely weaken the principal's bargaining position if it were known, but excepting any known material fact concerning:
  - (i) a defect in the property; or (ii) the client's ability to perform on the contract;
- (e) reasonable care and diligence;
- (f) holding safe and accounting for all money or property entrusted to the agent; and
- (g) any additional duties created by the agency agreement;

As seen in the aforementioned Administrative Rules, a licensee is held to a very high standard of conduct when facilitating a real estate transaction. This means that although a commission check is the ending goal, it should not be the most important objective. **These rules should inspire a certain amount of self-reflection and prioritization of our personal standards. The needs of the principal are the foundation upon which we structure our conduct.** It is very common for a principal to lack the knowledge required to carry out the sale of their home. Through a commission check or other valuable consideration, the principal is purchasing the use of your knowledge and abilities, and placing it with their own desire to obtain the best possible deal for themselves. The facilitated transaction should always be done in a manner that reflects this desire.

If an investigation by the Division reveals that a licensee has structured a deal to benefit the licensee over the principal, or has acted in any way that does not reflect the duties of a fiduciary, action can be taken against that individual's license. If this fiduciary duty is upheld first and foremost, relationships are stronger, trust is maintained, and care and diligence can be carried out with minimal risks. If, as a licensee, you review and apply these rules, they will not only help keep the public safe, but will increase your sphere of influence and help your business grow!

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