

The Legal Strategist

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TEXAS ESOTERIC FACTS

A fiduciary is a person or organization that acts on behalf of another, to take care of money and/or assets, in a relationship of greatest confidence and trust. Under Texas law, a fiduciary is bound legally and ethically to act in the other's best interests rather than his or her own. A fiduciary must be able to act without any conflict of interest.

The first suspension bridge in the United States was the Waco Bridge. Built in 1870 and still in use today as a pedestrian crossing of the Brazos River.

The Feature Topic is a cursory review. If you would like more information on this, or any other topic previously covered in my newsletter, which can be viewed on [The Legal Strategist](#) tab of my web site, please contact my office at 713.526.1883.

Scott Barrett

FEATURE TOPIC: **TEXAS FIDUCIARY DUTY**

What is a fiduciary relationship?

Fiduciary relationships are associations that can exist in several different contexts, including business situations. They are formal relationships defined explicitly by the law. Fiduciary relationships are defined by courts; they exist between people or organizations that hold custody and/or control of the property of another. Examples of fiduciary relationships include associations between agents and employees, individual business partners, and members of a board of directors. These relationships often involve trustees, administrators, or executors; escrow agents or brokers; corporate directors and officers; or other types of business partners.

Understanding fiduciary duties

Fiduciary duties occur in a variety of business situations. These duties result from fiduciary relationships built on elements of trust and confidence, sometimes over long stretches of time and personal experience. They fall into the categories of the duty of care, the duty of loyalty, and the duty of good faith. Duties within these categories can vary but can include acting with integrity in all matters relating to the fiduciary relationship, adhering to professional ethical standards, being completely honest in financial dealings, taking responsibility and being accountable for financial management, taking actions that are fair and always in the beneficiary's interest, and communicating with the beneficiary to secure consent for any financial actions.

What is a breach of fiduciary duty?

A breach of fiduciary duty can occur in any business relationship in which a fiduciary is active. Examples of such breaches from within the business world include situations in which an agent, such as an employee, acts outside of the interests of a principal, such as an employer, by way of failing to carry out work responsibilities, acting on behalf of a competitor, sharing trade secrets, etc. To prove a breach of fiduciary duty in Texas, one must prove the following elements:

- the existence of a fiduciary relationship at the time of the breach,
- failure on the part of the fiduciary to uphold his or her duty,
- damages/harm that arose from the breach, and/or unjustified benefits/gains for the fiduciary.

A violation of fiduciary duty may result in a variety of legal penalties for the fiduciary. These penalties include most typically the removal of the fiduciary from his or her role of trust, payment for the actual financial damages incurred, and punitive damages if warranted (i.e. the breach occurred due to malicious or fraudulent actions of the fiduciary). In Texas, this means there is a real possibility of criminal exposure.

If you would like more information on this or any other topic relating to fiduciary duty under Texas law, please contact [Scott Barrett](#) to set up a consultation.