

Everything agents should know about fiduciary duties

Real estate agents should be familiar with these duties and make sure to adhere to them in order to avoid legal liability and to maintain the trust and confidence of their clients



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Fiduciary duties are legal obligations that require an individual or entity to act in the best interests of another party. In real estate, agents have a fiduciary duty to their clients, which means that they must act in the best interests of their clients and not their own interests.

State-specific fiduciary duties for real estate agents may vary, but many agents may recall learning the acronym OLD CAR in pre-licensing class and as listed [here](#) by the National Association of Realtors. Let's take a closer look at these fiduciary duties:

- Obedience
- Loyalty
- Disclosure
- Confidentiality
- Accounting
- Reasonable care and diligence

The duty of obedience

The duty of obedience requires the agent to follow the [instructions of the client](#) and to act in accordance with the client's wishes. However, the duty of obedience does not include an obligation to obey any unlawful instructions; such as a request to discriminate in the sale or rental of housing or to misrepresent the condition of the property. Compliance with instructions the agent knows to be unlawful could constitute a breach of an agent's duty of loyalty.

Example: *It's Friday evening and you've just sat down for a glass of wine. Your client calls and wants you to submit an offer twenty thousand less than the list price. When you contact the listing agent, they inform you that there are already multiple offers on this property and the deadline is in an hour. Your client insists that you submit the offer anyhow. Do you do it? YES!*

On occasion, a client may request something that the agent disagrees with or does not see as favorable for the client. While agents are charged with giving their best advice in the client's best interest, they are not authorized to think or decide for the client. Taking an apparently unreasonable position on behalf of a client may be necessary and is required under the duty of obedience.

The duty of loyalty

The duty of loyalty is one of the most fundamental [fiduciary duties](#) owed by an agent to his principal. The duty of loyalty requires the agent to act at all times solely in the best interests of his principal to the exclusion of all other interests, including the brokers and to not take any actions that would conflict with the client's interests.

The most common lawsuits brought against real estate agents are for breach of duty because clients place trust in their agents' expertise and their agent must act in the best interest of the client.

Example: *A real estate broker purchases property listed with his firm and then immediately resells it at a profit. Ordinarily, this is perfectly appropriate and lawful by persons acting "at arm's length." But a fiduciary will be deemed to have "stolen" a profit opportunity rightfully belonging to his principal and thus to have breached his duty of loyalty.*

The duty of disclosure

The duty of [disclosure](#) means that agents have a legal obligation to disclose any known material facts about the property or the transaction to their clients. Material facts are facts that could reasonably be

Example: *An agent knows that there is a problem with the property's foundation. They have a duty to disclose this information to their clients, even if it may be unfavorable to the sale. Similarly, if the agent knows that the seller is under financial duress and is motivated to sell the property quickly, they must also disclose this information to their clients.*

The duty of disclosure is important because it ensures that clients are fully informed about the property and the transaction, and can make informed decisions about whether to proceed with the purchase. It also helps to build trust and establish a positive relationship between agents and their clients.

In some states, agents may be required to provide a written disclosure statement to their clients outlining any known material facts about the property. It's important for agents to familiarize themselves with the specific disclosure requirements in their state.

The duty of confidentiality

The duty of [confidentiality](#) requires the agent to keep confidential any information that might weaken his principal's bargaining position if it were revealed. This includes any personal or financial information provided by the client, as well as any information obtained during the course of the transaction.

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Example:

A breach of confidentiality can occur unintentionally in the following circumstances:

- *Casually sharing prior sale price or fall-through information with colleagues*

- *Unnecessarily revealing seller or buyer motivation*
- *Discussing the client's financial situation or negotiating philosophy*
- *Revealing things such as "the seller is anxious" or "the buyer just has to have this house" without the client's express permission*
- *Divulging unauthorized information, even when this is intended to help the client.*
- *Telling a buyer the lowest price the seller would be willing to accept*
- *Disclosing any price other than the list price if not instructed by the seller to do so*

CAVEAT: This duty of confidentiality plainly does not include any obligation on a broker representing a seller to withhold from a buyer known material facts concerning the condition of the seller's property or to misrepresent the condition of the property. To do so would constitute misrepresentation and would impose liability on both the broker and the seller.

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Confidentiality as a facilitator: *Confidentiality is the only applicable fiduciary duty in a facilitator relationship.*

The duty of accounting

The duty of accounting obligates real estate agents to timely account for all [money or property](#) belonging to his client that is entrusted to him. This duty compels a real estate broker to safeguard any money, deeds, or other documents entrusted to him that relate to his client's transactions or affairs. This includes earnest money funds, rents collected or any expenses paid on behalf of a client.

Example: *When an agent is holding a deposit for a property on behalf of their client, they have a duty to keep accurate records of the deposit and to account for it properly when it is time to close the transaction.*

The duty of reasonable care

The duty of reasonable care requires the agent to act with the level of care, skill, and diligence that a reasonable and competent agent would use in similar circumstances. By reason of the license, a real estate agent is deemed to have skill and expertise in real estate matters superior to that of the average person.

As an agent representing others in their real estate dealings, a broker or salesperson is under a duty to use his [superior skill and knowledge](#) while pursuing his principal's affairs.

The agent must know the reasonable limits of his or her expertise and present an honest portrayal of those limits. Fulfilling the duty of reasonable care is also done by making sure to comply with all applicable statutes and regulations, including without limitation fair housing and civil rights statutes.

In general, real estate agents should be familiar with these duties and make sure to adhere to them in order to avoid legal liability and to maintain the trust and confidence of their clients.

It's important to note that these fiduciary duties are not exhaustive, and may vary from state to state. It's always a good idea for real estate agents to familiarize themselves with the specific fiduciary duties that apply in their state.