

## Can You Sue for Breach of Fiduciary Duty in South Carolina?

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By Taylor Ambrosius on January 25, 2024

What happens when the personal representative of a will acts in their own interests rather than the best interests of the deceased? Similarly, what if a corporate officer engages in self-dealing rather than acting in the best interests of the corporation?

Both are examples of a breach of fiduciary duty. In South Carolina, there are legal remedies available for plaintiffs who can prove that someone breached their fiduciary duty owed to them. When determining whether you can sue for breach of fiduciary duty, it's important to consider whether a fiduciary relationship existed, the nature of the relationship, the type of duty owed, whether there was a breach, and what damages resulted from the breach.

### What is a Fiduciary Duty?

A fiduciary duty is a legal obligation to act in a manner that is consistent with the best interests of another person or entity. The person who owes the duty is referred to as the "fiduciary", while the person to whom the duty is owed is known as the "beneficiary" or "principal".

The fiduciary must not only act in the best interests of the beneficiary, but they must also refrain from taking actions that can potentially harm the beneficiary or their interests.

Depending on the nature of the relationship, the fiduciary may be responsible for the management and protection of money or property, have an obligation to act in the best interests of a business or corporation, or even a legal obligation to represent a client's best interests. They must also disclose any conflict of interest they may have, whether that be with another client or their own personal interests.

This often arises in business or professional relationships. For example, directors of corporations are charged with fiduciary duties, such as the duty of care and the duty of loyalty. The following are examples of several fiduciary relationships that commonly arise, which may depend on the circumstances.

### Examples of Fiduciary Relationships

- Agent to principal
- Corporate officer to shareholders
- Trustee to beneficiary
- Attorney to client
- Accountant to client

- Employer and employee
- Executor or personal representative of an estate
- Realtor to client

## Types of Fiduciary Duties

There are several types of fiduciary duties, including the duty of care, duty of loyalty, duty of good faith, confidentiality, and other duties that are created depending on the nature of the relationship.

### **Duty of Care**

The duty of care includes the responsibility to be well informed to make decisions that protect a beneficiary's interest. This requires the fiduciary to make decisions with reasonable diligence and prudence. Notably, the duty of care requires the fiduciary to use the care that a person in a similar position would reasonably believe to be appropriate under the circumstances.

In the context of corporations, officers and directors are required to keep the best interests of the company in mind, perform their duties in good faith, and exercise reasonable care. This duty is owed by the directors and officers to the business and not the corporation's stakeholders.

Additionally, [Section 33-44-409](#) of the South Carolina LLC Act, states that a person who owes a duty of care must refrain from engaging in grossly reckless or negligent conduct, intentional misconduct, or knowingly violating the law.

It is also important to keep in mind that fiduciaries may be shielded by the Business Judgment Rule. This means that a director or officer of a corporation or a manager of an LLC who made a decision in good faith with an informed rational basis for doing so will not be liable if it ends in a bad result.

### **Duty of Loyalty**

The **duty of loyalty** requires that the fiduciary always puts the interests of their beneficiary above their own. This often arises in relationships between directors or officers and a corporation and between trustees and beneficiaries.

When taking on a fiduciary role, the fiduciary must not take advantage of information that is valuable to the company or beneficiary, fail to disclose conflicts of interest, or put their own interests first.

The best way to avoid violations of this duty is to disclose all conflicts of interest upfront and present any and all opportunities relevant to the beneficiary or corporation while obtaining informed consent before trying to benefit from them personally.

**Duty of Good Faith**

The **duty of good faith** governs the principle that directors and officers of a corporation must act honestly, fairly, and with integrity in their dealings and decision-making on behalf of the company. This means they cannot intentionally take action that may harm the corporation, violate the law, or neglect their responsibilities as a director or officer. Usually, this fiduciary duty arises under the duty of loyalty.

**Duty of Confidentiality**

This legal obligation requires that the fiduciary keep all information pertaining to the beneficiary and their legal relationship confidential. For example, in the context of an attorney-client relationship, the attorney has a legal obligation to not disclose any privileged or confidential information about the client to a third party.

**Rule 1.6 of the South Carolina Rules of Professional Conduct** governs this fiduciary duty. It states that a lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized to carry out the representation, or the disclosure is permitted by paragraph B. Noteworthy instances allowing disclosure under paragraph B include preventing the client from committing a criminal act or preventing reasonably certain death or substantial bodily harm.

Other fiduciary relationships that trigger the duty of confidentiality include the relationship between a doctor and a patient, a client and an accountant, and other similar relationships.

**What is Breach of Fiduciary Duty in South Carolina?**

In general, a breach of duty occurs when a fiduciary fails to fulfill their duties or acts in a way that is inconsistent with their fiduciary responsibilities. The following list of examples is not exhaustive but includes some of the most common breaches of fiduciary duty.

**Examples of breach of fiduciary duties include:**

- Failing to disclose a conflict of interest
- Disclosing trade secrets to someone outside of the business
- Self-dealing or putting their interests above the beneficiary
- Acting in the interest of a competitor
- Preventing shareholders from exercising their voting rights
- Using information obtained due to the fiduciary relationship for personal gain
- Misappropriating assets or money from a trust or estate
- Failing to comply with laws or regulations regarding the administration of a trust or estate
- Commingling of assets

**How to Sue for Breach of Fiduciary Duty in South Carolina**

There are several things that a plaintiff must prove to establish a claim for breach of fiduciary duty. The legal standard of fiduciary duty is high because of the nature of fiduciary relationships. These include:

1. The existence of a fiduciary duty;
2. A breach of that fiduciary duty owed to the plaintiff by the defendant; and
3. Damages proximately resulting from the wrongful conduct of the defendant.

*RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 732 S.E.2d 166 (2012). To file a lawsuit against a fiduciary for breach of a fiduciary duty, you must be the person to whom a duty was owed. You may not file a lawsuit on behalf of another person unless you have some legal authority to do so.

If you do have a claim for breach of fiduciary duty, you must file your lawsuit before the statute of limitations runs out. In the state of South Carolina, the **statute of limitations** on a breach of fiduciary duty is three years from the date the breach occurred.

## What Damages Are Available for Breach of Fiduciary Duty?

The potential consequences of breaching fiduciary duty depend on the nature of the relationship and the type of breach.

### **Compensatory Damages**

These types of damages are designed to compensate the injured party for the breach of fiduciary duty. This could help compensate the injured party for any monetary losses that occurred as a result of the fiduciary's breach.

In the context of a business relationship, a director may make a decision that allows him to profit at the corporation's expense. Additionally, a trustee may use funds from a trust to make personal investments or commingle trust assets with their own.

In either case, the injured party, if they can prove the three requirements, will be awarded compensation to put them back in the position they were in prior to the breach.

### **Punitive Damages**

These damages are designed to punish the person who breached their fiduciary duty. The goal is that once punished for their actions, they will choose not to breach their duty again in the future. Punitive damages are typically used in cases involving fraud or malice.

### **Professional Consequences**

Another risk of breaching fiduciary duty is losing the ability to work in the field in which a fiduciary is licensed. This usually pertains to lawyers, doctors, accountants, and other professionals who need special licensing to work in their profession. If their fiduciary breach was significant enough, a court or the licensing agency may address the matter by suspending

their license.

If you would like to speak to an experienced litigation attorney about a potential breach of a fiduciary duty, [contact Rosen Hagood today](#).