



Fiduciary – Big Word with Big Responsibility

When a business broker becomes an agent of a seller or buyer, either intentionally by entering into a listing agreement or unintentionally by actions, the relationship is termed fiduciary. Fiduciary duties are the highest duties known to law. A fiduciary is expected to be extremely loyal to the person to whom they owe the duty, the principal, client, seller or the buyer. These fiduciary duties are in addition to any duties or responsibilities included in the listing “employment agreement” or the buyer representation agreement.

Fiduciary duties of the business broker include:

Loyalty – is the most basic fiduciary duty. A business broker must be loyal and keep his client's best interests above all others including his own. The business broker must not allow the amount of commission to be earned on each offer prevent him from presenting all offers to his client. To do so, would be a violation of the fiduciary duty of loyalty.

Confidentiality – a business broker is obligated to keep his client’s confidence and secrets. A business broker should not reveal any confidential information that would lessen his client’s negotiating position. A business broker would be violating confidentiality by telling a buyer that his seller client was desperate to sell due to a divorce. This is of course if his seller client had not given him permission to reveal this information.

Disclosure - a business broker must disclose to his client all relevant and material information. A business broker should share with his client everything he knows about the transaction, his knowledge of third parties, etc.

Obedience – a business broker is obligated to obey all lawful instructions of his client.

Reasonable care and diligence – a business broker is obligated to represent his client competently. A business broker promotes his services as a professional with knowledge and skill in business transfers. Therefore, the law requires the business broker to act with and provide his client with competent guidance and advice. The fiduciary duty of reasonable care and diligence is often the duty violated by inexperienced and untrained business brokers.

Accounting – the business broker must account for all funds, property, documents, information, etc. provided to him by his client.

Fiduciary – Big Word with Big Responsibility it is important that a business broker understands each of the fiduciary duties and meets each obligation.