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The Fiduciary's Guide to Conflict of Interest Claims | RMO

One of a fiduciary's many duties is to avoid conflicts of interest, but what exactly does that mean? And what qualifies as a conflict? Here's a legal guide.

Fiduciary conflict of interest claims are very common. Conflicts of interest can be a confusingly grey area for fiduciaries, especially when they are also a beneficiary. Trustees, executors, conservators, and power of attorney agents (also called an attorney in fact) often don't know they even have a conflict of interest, or have committed any type of breach. It can be hard to recognize what does and doesn't constitute a conflict of interest. We discuss further below.

What is a fiduciary conflict of interest?

When what is best for beneficiaries runs counter to what is best for a fiduciary personally, the fiduciary may have a conflict of interest. If they fail to disclose that conflict, or engage in self-dealing, they may be held legally liable and face surcharge (monetary damages). The golden rule for all fiduciaries is that they must place the interests of beneficiaries above their own interests at all times, in all matters. Fiduciaries have a legal duty of loyalty, and this duty naturally involves avoiding conflicts of interest.

But just because a fiduciary has a conflict of interest does not mean they have to relinquish their position, or even that they can't profit from it. They just need to be entirely transparent and proactive in disclosing the conflict and getting approvals from those they serve (and/or the court).

What is fiduciary self-dealing?

"Self-dealing" often goes hand-in-hand with conflicts of interest. Fiduciary lawsuits are so on the rise that, in recent years, California even added a legal provision prohibiting self-dealing specifically. A fiduciary has engaged in self-dealing if they've exploited their position for personal gain. For example, a fiduciary cannot sell the assets under their management to themselves at a lower price, or charge excessive fees to manage a trust. Self-dealing constitutes a breach of fiduciary duty, and can result in monetary damages being awarded to the plaintiff, and the offending fiduciary likely will be removed.

What are some examples of fiduciary conflicts of interest?

Examples of fiduciary conflicts of interest abound, and take many different forms. Sometimes, the fiduciary is not even aware that they are involved in a conflict of interest, because they are simply trying to do their job in the most convenient and efficient manner possible.

In the context of estate law, trustees, executors, conservators, and power of attorney agents may be accused of conflict of interest when::

-They sell estate assets to themselves
-They buy assets from themselves with estate funds
-They hire their own company to perform estate services

-They charge excessive fees
-They receive indirect income or “kickbacks” from other parties
-They sell property or real estate that co-beneficiaries wish to retain
-They refuse to sell property or real estate that co-beneficiaries wish to sell
-They make loans or gifts to themselves from the estate
-They use a third-party or separate account to divert funds to themselves
-They make investments decisions that benefit themselves and not other beneficiaries

Does a fiduciary have to resign if they have a conflict of interest?

No, not unless they choose to, or are ordered to by the courts. The fact is that most fiduciaries *do* have conflicts of interest, especially when they’re also beneficiaries. But just because a conflict exists does not mean that a fiduciary can’t serve in their role. They simply need to be transparent with the trust beneficiaries and ensure that they are not favoring themselves over the other beneficiaries. A good trust litigation attorney can help navigate these waters.

Oftentimes, if a fiduciary is open and honest about the fact that they stand to profit personally from a transaction, beneficiaries may consent with it as long as it is also good for them. The key to avoiding self-dealing claims is clear communication and thorough disclosure. All fiduciaries should consult a trust lawyer if they think they might have a conflict or interest or may be accused of having one. An attorney can help draft disclosure documents and otherwise protect a fiduciary from avoidable lawsuits and potential liability.

Can I be sued even if I disclosed a conflict of interest?

In certain cases, yes. Many fiduciaries think informal verbal disclosure of a conflict of interest is sufficient to protect them from a lawsuit, but disclosures must be made in a timely, formal, and written manner AND all beneficiaries must sign off on transactions if a potential conflict of interest is involved. If they do not, the fiduciary can attempt to effectively “go over their head” by using a Notice of Proposed Action, which acts as an authorization if the beneficiaries do not object, or the fiduciary can go to probate court and seek an order on a petition for instructions. But they can still be sued later on if a self-dealing transaction had unforeseen negative consequences the trustee did not reveal, or if the fiduciary had special knowledge that was not revealed to the other parties. In other words, consent must always be fully informed.

Can a fiduciary profit personally if it is also good for beneficiaries?

Yes, but not excessively so, and even then a fiduciary would be well-served to get beneficiary consent. In many cases, a fiduciary does not realize they have engaged in self-dealing because a transaction was also “good” for the other beneficiaries. And if this is truly the case, legal issues usually don’t arise in the first place. But when a fiduciary benefits personally from an action they take, the impartiality of their judgment can be called into question. And the question then becomes -- would a prudent person who didn’t stand to profit have done the same thing? If not, the fiduciary can face civil liability and removal from their position. This is why full disclosure and consent is so important if a conflict of interest exists. It is always best to err on the side of caution.

How does a fiduciary avoid conflicts of interest if they're also a beneficiary?

Many fiduciaries like trustees, executors, conservators, and power of attorney holders are also heirs and beneficiaries of the assets under their management. This can make things more complicated as far as avoiding self-dealing or conflict of interest claims. If a fiduciary is also a beneficiary, they need to be extra careful not to ingratiate themselves at the expense of co-beneficiaries. They must not be perceived as abusing their authority to profit disproportionately from their position. It is absolutely vital for fiduciary beneficiaries to make sure they're on the same page as co-beneficiaries, and, to the extent possible, to get this in writing prior to engaging in any major transactions. Some fiduciaries even opt out of their role if they're afraid of facing a potential lawsuit, or just don't want to deal with familial tension and in-fighting. You should always consult with a good estate attorney before you decide whether to serve as trustee. They can help you navigate the inherent conflict of interest and shield you from liability.

Have questions? Give us call. Shoot us an email. The consultation is always free.
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