



## **Preventing Breach of Fiduciary Duty Claims in Real Estate Transactions**

By: Brian Callahan, Great American Insurance Group, Professional Liability

### **Understanding Fiduciary Duty in Real Estate**

A fiduciary duty is a legal and ethical obligation that arises when one party (the fiduciary) is entrusted to act in the best interest of another (the principal). In real estate, this duty is foundational to the agent-client relationship and represents one of the highest standards of care recognized by law.

Once an agency relationship is established, real estate agents owe the following fiduciary duties to their clients:

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

These obligations are not merely best practices; they are enforceable under both common law and state-specific statutes. A breach can result in civil liability, disciplinary action, and reputational damage.

### **What Constitutes a Breach of Fiduciary Duty?**

Common breach of fiduciary duty claims include failure to disclose material facts, conflicts arising from dual agency, acting in self-interest, improperly sharing confidential information, or otherwise neglecting to act in the client's best interest. Examples of potential breaches include:



- Knowingly withholding information about a property's defects that could influence a client's decision to purchase
- Failing to present all offers to a client
- Not disclosing potential conflicts of interest (e.g., a familial relationship between the buyer's agent and the seller)
- Sharing a client's personal or financial information without consent
- Accepting or declining an offer without the client's informed consent
- Steering a client toward a property that yields a higher commission for the agent

### **Fiduciary Duty vs. General Duty of Care**

Unlike the general duty of care, which applies to all professionals, a fiduciary duty is heightened. It requires agents to prioritize their clients' interests above their own—even at personal cost. This standard is comparable to the duties owed by:

- Attorneys to clients
- Trustees to beneficiaries
- Corporate directors to shareholders

### **Risk Mitigation Strategies**

1. **Clear Communication and Documentation:** Maintain detailed records of all interactions, disclosures, and signed documents. Follow up verbal discussions with written confirmation. Use standardized disclosure forms and obtain written consent for dual agency.
2. **Full and Honest Disclosure:** Disclose all known material facts that may affect a client's decision-making. Transparency builds trust and helps protect against claims of misrepresentation or omission.



3. **Avoid Conflicts of Interest:** Never allow personal gain to interfere with client duties. Disclose and manage potential conflicts promptly and obtain informed written consent when necessary.
4. **Ongoing Education:** Stay current on local laws, ethical standards, and changes in fiduciary obligations. Attend regular risk management and ethics training.
5. **Broker Oversight:** Brokers should implement policies and review agent activity to ensure compliance. Encourage open communication within teams to address concerns early.

### Responding to Allegations

If a breach claim arises, respond promptly and professionally. Notify your broker and your errors and omissions (E&O) insurance carrier immediately. Gather all documentation related to the transaction and avoid direct confrontation with the claimant.

### In Conclusion

Preventing fiduciary duty breaches begins with proactive education, diligent documentation, and an unwavering commitment to the client's best interest. By incorporating these principles into daily practice, real estate professionals can reduce legal risk while building trust and long-term client relationships.

Great American Insurance Group, 301 E. Fourth St., Cincinnati, OH 45202. The information presented in this publication is intended to provide guidance and is not intended as a legal interpretation of any federal, state or local laws, rules or regulations applicable to your business. The loss prevention information provided is intended only to assist policyholders in the management of potential loss producing conditions involving their premises and/or operations based on generally accepted safe practices. In providing such information, Great American does not warrant that all potential hazards or conditions have been evaluated or can be controlled. It is not intended as an offer to write insurance for such conditions or exposures. The liability of Great American Insurance Company and its affiliated insurers is limited to the terms, limits and conditions of the insurance policies underwritten by any of them. The claims scenarios in this material are provided to illustrate possible exposures faced by your clients. The facts of any situation which may actually arise, and the terms, conditions, exclusions, and limitations in any policy in effect at that time, are unique. Thus, no representation is made that any specific insurance coverage applies to the above claims scenarios. The Great American Insurance Group eagle logo and the word marks Great American® and Great American Insurance Group® are registered service marks of Great American Insurance Company. © 2025 Great American Insurance Company. All rights reserved. 5331-PLD (07/25)