DEFINITION OF FIDUCIARY; EXPLANATION OF FIDUCIARY RELATIONSHIP.

A fiduciary⁰ is a person who is required to act honestly, in good faith and in the best interests of another person because a fiduciary relationship exists between them.¹

NOTE WELL: Where the relationship is such that a fiduciary duty arises as a matter of law, use the following bracketed paragraph.

[By law, a fiduciary relationship exists between

[attorneys and their clients³]

[principal and agent, including, e.g., principal operating under power of attorney⁴]

[trustee and beneficiary⁵]

[executor or administrator and heir, legatee or devisee⁶]

[guardians and their wards⁷]

[broker and principal⁸]

[physician and patient⁹]

[partners to a partnership¹⁰]

[spouses¹¹].]

NOTE WELL: For other relationships where it is alleged that a fiduciary relationship exists, use the following bracketed paragraphs.

[A fiduciary relationship may exist in a variety of circumstances.¹²,¹³ It is not necessary that a fiduciary relationship be a technical or legal relationship,¹⁴ and even where a fiduciary relationship does not normally exist, one may be created by conduct.¹⁵]
A fiduciary relationship exists anytime a person undertakes to act for the benefit of another, thus causing the other to place special faith, confidence and trust in the person undertaking to act in the other’s best interest.\(^{16}\)

1 May be of particular use with charges on fraud (N.C.P.I.–Civil 800.00 et seq.) and parol trusts (N.C.P.I.–Civil 850.00 et seq.). Compare N.C.P.I.–Civil 800.15.


3 “A fiduciary relationship can exist as a matter of fact in those circumstances ‘in which there is confidence reposed on one side, and resulting domination and influence on the other.” Hewitt v. Hewitt, ___ N.C. App. ___, ___, 798 S.E.2d 796, 800 (2017) (citing Abbitt, 201 N.C. at 598, 160 S.E. at 906).

4 Abbitt, 201 N.C. at 598, 160 S.E. at 906.

5 Id.

6 Abbitt, 201 N.C. at 598, 160 S.E. at 906.

7 Id.

8 Id.


10 Id.


12 Where the existence of a fiduciary relationship is not established by the evidence as a matter of law, it is proper for the trial court to define "fiduciary relationship" but leave to the jury to determine as a matter of fact whether such a relationship has arisen. Will of Baitschora, 207 N.C. App. 174, 189-91, 700 S.E. 2d 50, 60-62 (2010).

13 Abbitt, 201 N.C. at 598, 160 S.E. at 906.


15 See Dallaire v. Bank of Am., 376 N.C. 363, 368, 760 S.E.2d 263, 267 (2014) (citing Branch Bank & Trust Co. v. Thompson, 107 N.C. App. 53, 61, 418 S.E.2d 694, 699 (1992), for the principle that “given the proper circumstances” even a bank-customer transaction could give rise to fiduciary relationship); see also Moore, 11 N.C. App. at 265, 181 S.E.2d at 116 (citing 86 C.J.S., Tenancy in Common, § 17, p. 377 for the same regarding the duty of a tenant who undertakes to manage property on behalf of a tenancy in common).

16 See Moore, 11 N.C. App. at 265, 181 S.E.2d at 116 (tenant occupied a fiduciary relationship with his co-tenants where he “undertook to manage” land for their benefit, “causing them to repose special faith, confidence and trust in him to represent their best interest ...”).