

800.04 BREACH OF FIDUCIARY DUTY.

The (*state number*) issue reads:

“Did the defendant take advantage of a position of trust and confidence to bring about (*identify transaction*)?”

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, two things:¹

First, that a relationship of trust and confidence existed between the plaintiff and the defendant such that the defendant had a duty to act in good faith and with due regard for the plaintiff’s interests.

[(*Use where a fiduciary relationship exists as a matter of law; for a list of such relationships, see N.C.P.I.—Civil 800.03—Definition of Fiduciary; Explanation of Fiduciary Relationship.*) In this case, members of the jury, the plaintiff and the defendant had a relationship of (*name fiduciary relationship, e.g., attorney and client, trustee and beneficiary, guardian and ward, agent and principal, etc.*). You are instructed that, under such circumstances, (*name fiduciary relationship*) is a relationship of trust and confidence.]

[(*Use for other relationships where it is alleged that a fiduciary relationship² exists.*) Such a relationship may exist in a variety of circumstances. It is not necessary that this relationship be a technical or legal relationship and it may be created by the parties’ conduct. Such a relationship exists between the plaintiff and the defendant when the defendant undertakes to act for the benefit of the plaintiff, thus causing the plaintiff to place special faith, confidence, and trust in the defendant undertaking to act in the plaintiff’s best interest.]

Second, that the defendant breached this duty to act in good faith and with due regard for the plaintiff’s interests by using this position of

trust and confidence to bring about (*identify transaction*) to the detriment of the plaintiff.³

Finally, as to the (*state number*) issue on which the plaintiff has the burden of proof, if you find, by the greater weight of the evidence, that there was a relationship of trust and confidence between the plaintiff and the defendant such that the defendant had a duty to act in good faith and with due regard for the plaintiff's interests and that the defendant breached this duty by bringing about (*identify transaction*) to the detriment of the plaintiff, then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant.

1. *White v. Consol. Plan., Inc.*, 166 N.C. App. 283, 294, 603 S.E.2d 147, 156 (2004). A breach of fiduciary duty claim does not require a finding that the defendant sought to benefit wrongfully from the transaction. Indeed, that is the key distinction between a claim for breach of fiduciary duty and a claim for constructive fraud. *Id.* ("The primary difference between pleading a claim for constructive fraud and one for breach of fiduciary duty is the constructive fraud requirement that the defendant benefit himself.").

2. Some appellate decisions have phrased this first element as requiring the defendant to owe the plaintiff a fiduciary duty, *see, e.g., Bryant v. Wake Forest Univ. Baptist Med. Ctr.*, 281 N.C. App. 630, 637, 870 S.E.2d 269, 274 (2022), while other appellate decisions have phrased this element as requiring that there be a confidential or fiduciary relationship between the parties, *see, e.g., Azure Dolphin, LLC v. Barton*, 371 N.C. 579, 599, 821 S.E.2d 711, 725 (2018). Regardless of how it is phrased, this first element generally has been "described as arising when there has been a special confidence reposed in one who in equity and good conscience is bound to act in good faith and with due regard to the interests of the one reposing confidence. A fiduciary relationship may exist in law or in fact. For that reason, even when a fiduciary relationship does not arise as a matter of law, that is, due to the legal relations between two parties, it may yet exist as a matter of fact in such instances when there is confidence reposed on one side, and the resulting superiority and influence on the other." *Fox v. Fox*, 283 N.C. App. 336, 873 S.E.2d 653, 661 (2022).

3. *White v. Consol. Plan., Inc.*, 166 N.C. App. 283, 294, 603 S.E.2d 147, 156 (2004).