

800.03 DEFINITION OF FIDUCIARY¹; EXPLANATION OF FIDUCIARY RELATIONSHIP.

A fiduciary 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.²

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 clients]³

[principal and agent, including, e.g., principal operating under power of attorney]⁴

[trustee and beneficiary]⁵

[Less frequently encountered fiduciary relationships are listed in end note 6.]]⁶

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.⁷ It is not necessary that a fiduciary relationship be a technical or legal relationship,⁸ and even where a fiduciary relationship does not normally exist, one may be created by conduct.⁹

A fiduciary relationship exists when 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.^{10]}

¹. May be of particular use with instructions on Fraud, Breach of Fiduciary Duty,

Constructive Fraud, and Negligent Misrepresentation (N.C.P.I.—Civil 800.00 *et seq.*) and Parol Trusts (N.C.P.I.—Civil 850.00 *et seq.*).

². *Moore v. Bryson*, 11 N.C. App. 260, 181 S.E.2d 113 (1971); *Vail v. Vail*, 233 N.C. 109, 63 S.E.2d 202 (1951); *Abbitt v. Gregory*, 201 N.C. 577, 160 S.E. 896 (1931).

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*, 252 N.C. App. 437, 442, 798 S.E.2d 796, 800 (2017) (citing *Abbitt v. Gregory*, 201 N.C. 577, 598, 160 S.E. 896, 906 (1931)).

⁴. *Abbitt v. Gregory*, 201 N.C. 577, 598, 160 S.E. 896, 906 (1931).

⁵. N.C.G.S. §§ 36C-8-801–818 (2021); *see also Fox v. Fox*, 283 N.C. App. 336, 873 S.E.2d 653, 660 (2022).

⁶. A fiduciary relationship exists as a matter of law between

- executor or administrator and heir, legatee or devisee, *Abbitt*, 201 N.C. 577, 598, 160 S.E. 896, 906 (1931);
- guardians and their wards, *id.*;
- broker and principal, *id.*;
- physician and patient, *Hewitt v. Hewitt*, 252 N.C. App. 437, 442, 798 S.E.2d 796, 800 (2017) (citing *King v. Bryant*, 369 N.C. 451, 464, 795 S.E.2d 340, 349 (2017));
- partners to a partnership, *id.*;
- spouses, *Eubanks v. Eubanks*, 273 N.C. 189, 195, 159 S.E.2d 562, 567 (1968); and
- officers and board members of condominium associations and condominium unit owners, *Ironman Medical Properties, LLC v. Chodri*, 268 N.C. App. 502, 510, 836 S.E.2d 682, 690 (2019).

⁷. 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); *see also Abbitt v. Gregory*, 201 N.C. 577, 598, 160 S.E. 896, 906 (1931).

⁸. *Moore v. Bryson*, 11 N.C. App. 260, 265, 181 S.E.2d 113, 116 (1971).

⁹. *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 v. Bryson*, 11 N.C. App. 260, 265, 181 S.E.2d 113, 116 (1971).

¹⁰. *See Moore v. Bryson*, 11 N.C. App. 260, 265, 181 S.E.2d 113, 116 (1971) (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 . . .").