

## Client Level Fiduciary Duties vs. Customer Level Responsibilities

### Responsibilities (HARD) owed to a *Customer* (Non-Client) ...

- **HONESTY:** do not make statements or take actions that can result in fraud or misrepresentation (disclose material facts). Ensure all laws and regulations pertaining to the transactions are obeyed. Make timely agency disclosures so that customers can protect their interests; explain the difference between “customer” and “client”.
- **ACCOUNTING:** record money or property received and paid out; upon request, provide an accounting. Safeguard money and property held on behalf of the customer.
- **REASONABLE SKILL:** provide standards of practice and competence that are reasonably expected. Do not try to provide specialized professional services for a type of property outside your field of competence.
- **DISCLOSURE OF MATERIAL FACTS:** Disclose material facts about properties. Disclose agency relationships and explain the difference between a customer and client relationship in a timely fashion so that customer can protect their own interests.

### Fiduciary Duties (OLD CAR) owed to a *Client* ...

- **OBEDIENCE:** requires the agent to act subject to the principal’s continuous control by not exceeding the scope of authority conferred by the principal and by obtaining and following all lawful instructions. Do not make decisions for the client or exceed your authority.
- **LOYALTY:** prohibits the agent from advancing any interests adverse to the client’s interest or conducting the client’s business to benefit anyone other than the client. It is this duty which establishes the obligation to act solely in the best interests of the client. Give your clients your undivided loyalty. The client’s interest comes before all others including the agent’s.
- **DISCLOSURE:** requires the agent to disclose affirmatively, fully and honestly all information concerning the transaction and property that might affect the client’s decision.
- **CONFIDENTIALITY:** prohibits the agent from communicating key personal information about the client which was given to or acquired by the agent within the scope of employment as an agent to the client. Personal information must be kept confidential forever unless the client releases the agent from this duty. This does not pertain to material defects and conditions affecting a client’s property.
- **ACCOUNTING:** requires the agent to safeguard money or property held on behalf of the client. Maintain records and provide a prompt accounting when requested of money and property received and paid out.
- **REASONABLE CARE AND DUE DILIGENCE:** requires the agent to protect the client from foreseeable risks or harm and recommend that the client obtain expert advice or assistance when the client’s needs exceed the agent’s expertise.

Which would you prefer to be: a customer *or* a client? The difference?

The Code of Ethics *requires* clients to have representation contracts.

There is no time for inexperience, empty promises *or* false expectations!

**HIRE WISELY:** We are not “*all the same*”!