Chapter 22

Why Request a Fiduciary Oath?

Getting a commitment in writing marks the seriousness of the agreement or occasion. When you get married, you sign a marriage license. When you buy a house, you sign a purchase agreement. When you download a new version of a Mac operating system, you agree to the written terms and conditions. With written agreements being so commonplace, it's hardly a stretch to ask your financial advisor (or potential financial advisor) to sign a written statement of fiduciary responsibilities, aka a fiduciary oath.

A fiduciary oath refers to a statement signed by a fiduciary which declares the fiduciary's duties and responsibilities in writing. Groups such as the Committee for the Fiduciary Standard, founded in 2009 after the infamous series of financial crises, have emphasized the importance of signing such an oath to clarify the relationship between the fiduciary advisor and the client (and to help clients determine *if* a financial advisor is acting as a fiduciary).

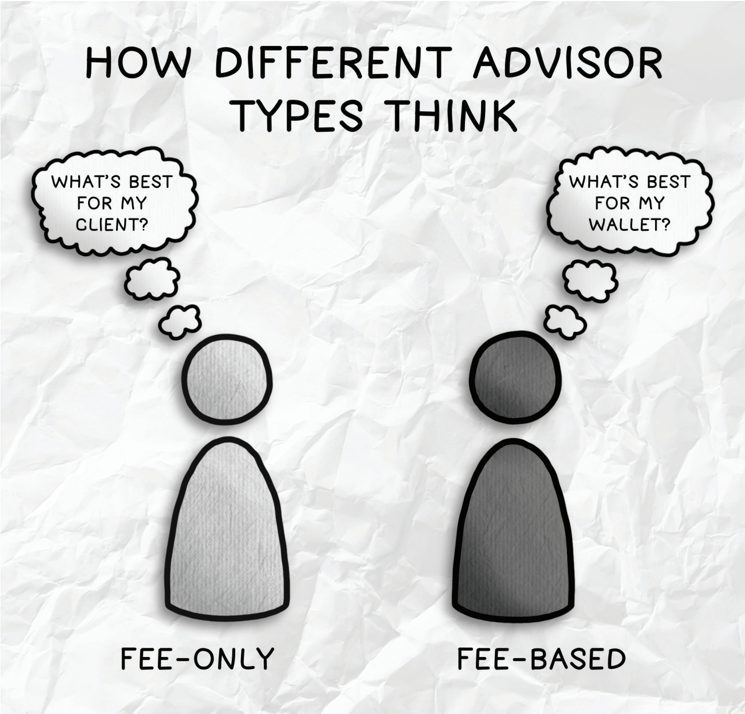
Before we discuss the importance of obtaining a written fiduciary oath, let's rewind and answer one core question:

Why Seek a Fiduciary?

If we condensed the information we've covered in the last two chapters, we see that the merits of working with a fiduciary boil down to a few key points. For one, a professional fiduciary is held to a higher standard of customer care than a broker, insurance salesperson, or bank representative. *True* fiduciaries are legally obligated to put their clients' best interests first and adhere to a fiduciary standard of care, whereas brokers or other product salespeople are only held to a "suitability" standard. The suitability standard does not prevent profit-seeking activities, and invisible costs can pile up (as retirement plan expert Scott Simon eloquently explains in his article "Why I'm a Fiduciary").*

This may seem straightforward, but things easily get muddled because brokers, bankers, and other professionals who deal with product sales can call themselves whatever they wish. Their title might be wealth manager, financial advisor, money manager, or anything of the kind. Titles are not regulated.

To complicate matters even further, some brokers are dually registered as Investment Adviser Representatives, meaning they *do* have a fiduciary duty . . . when acting as an Investment Adviser Representative. However, that duty is nullified when the same person is acting as a broker. This dual registration should make investors wonder who they're interacting with on any given day—the broker or the Investment Adviser Representative?



* Simon, "Why I'm a Fiduciary."

Ideally, anyone who provides personalized financial and investment advice should be held to a fiduciary standard. Unfortunately, that is not currently the case, so investors must exercise an abundance of caution when seeking the services of a financial advisor. That's where a fiduciary oath comes into play.

Why Ask for a Fiduciary Oath in Writing?

Working with a professional fiduciary—someone who has the proper training and is committed to upholding a fiduciary standard of care—is a prudent move for investors. However, because of loose regulations, the potential for dual registration, and a general lack of clarity in the financial advising arena, it can be difficult to know if you're *actually* working with a fiduciary or if you're working with someone who *claims* to be a fiduciary.

I could say I'm a golfer, but that doesn't mean I'm a professional (or any good). I might putter around on a mini golf course from time to time and (truthfully) claim to be a golfer. The same is true of those who claim to be fiduciaries. They might be playing fast and loose with that term.

To distinguish the fiduciaries from those masquerading as fiduciaries, it's wise for investors to ask financial advisors to document the meaning of *fiduciary*. What does this term mean, in practice? What are the fiduciary advisor's obligations to the client? These fiduciary responsibilities can be articulated through a fiduciary oath.

Kate McBride, fiduciary consultant and former chair of the Committee for the Fiduciary Standard, says that obtaining a written statement of fiduciary responsibilities is a best practice which drives accountability. "If it's in writing, it is likely that it will happen," McBride says, "and if it doesn't, you can and should find out why. Don't be shy. That's also why it should be in writing—it sets expectations for both the professional fiduciary and the client."*

In addition to setting clear expectations, a fiduciary oath can also offer the client a certain amount of protection. If the financial advisor outlines his or her fiduciary duties in writing and then blatantly

* McBride, interview by author, September 6, 2022.

disregards those duties, the client has clear evidence of wrongdoing, which can hopefully be used to help to rectify the situation.

If a financial advisor will not sign a fiduciary oath (like the sample fiduciary oath found on the website for the Committee for the Fiduciary Standard), the investor should find out why. The advisor may have a legitimate reason (e.g., perhaps they have their own fiduciary oath), but it's probable they are either *not* a fiduciary or their company does not allow them to sign such a document.

If I had to guess, I would say 90 percent of financial advisors would run away when presented with a fiduciary oath. These are the brokers, insurance agents, bankers, and other financial advisors whose loyalty lies with their company (and turning a profit) rather than with the investor. These are not true fiduciaries, and signing a fiduciary oath could bring about severe consequences for the employee from their employers.

What Should a Fiduciary Oath Contain?

When my financial advisory firm was putting together its fiduciary oath, we turned to the five core principles outlined by the Committee for the Fiduciary Standard for guidance. These principles are straightforward, easily adaptable, and are not difficult for any true fiduciary advisor to uphold. The Committee's fiduciary oath reads as follows:

I believe in placing your best interests first. Therefore, I am proud to commit to the following five fiduciary principles:

1. I will always put your best interests first.
2. I will act with prudence; that is, with the skill, care, diligence, and good judgment of a professional.
3. I will not mislead you, and I will provide conspicuous, full and fair disclosure of all important facts.
4. I will avoid conflicts of interest.
5. I will fully disclose and fairly manage, in your favor, any unavoidable conflicts.*

* Committee for the Fiduciary Standard, "Fiduciary Oath: Individual."

The financial advisory field can be full of dense language and terminology, but this fiduciary oath is simple and approachable. The average investor can look it over and instantly understand the agreement. While the Committee's version of the oath provides an excellent example, it's certainly not the only one in existence. The fiduciary oath by the National Association of Personal Financial Advisors (NAPFA) is also brief, straightforward, and well-written:

> The advisor shall exercise his/her best efforts to act in good faith and in the best interests of the client. The advisor shall provide written disclosure to the client prior to the engagement of the advisor, and thereafter throughout the term of the engagement, of any conflicts of interest, which will or reasonably may compromise the impartiality or independence of the advisor. The advisor, or any party in which the advisor has a financial interest, does not receive any compensation or other remuneration that is contingent on any client's purchase or sale of a financial product. The advisor does not receive a fee or other compensation from another party based on the referral of a client or the client's business.
>
> **Following the NAPFA Fiduciary Oath means I shall:**
>
> - Always act in good faith and with candor.
> - Be proactive in disclosing any conflicts of interest that may impact a client.
> - Not accept any referral fees or compensation contingent upon the purchase or sale of a financial product.*

Though these oaths are a bit different, their core tenets are the same. Both articulate a commitment to act in the client's best interests, disclose any conflicts of interest, and practice integrity.

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* The National Association of Personal Financial Advisors, "Fiduciary Oath."

What Can Investors Do to Find a True Fiduciary?

1. Research your advisor's background.

Before asking a financial advisor to sign a fiduciary oath, it's a good idea to do a little digging. Comb through the advisor's (or their company's) website to look at their credentials and see if their firm is a Registered Investment Adviser (this doesn't necessarily guarantee the financial advisor will act as a fiduciary, but it's a good first step). You can also search through online databases to find fee-only financial advisors who have been vetted by NAPFA and adhere to its code of ethics.

2. Pay attention to the company's language.

Comb through the website and any literature a financial advisory firm gives you and look for language related to fiduciary duties. Does it appear at all? Is there a fiduciary oath on the company's website? Is the company listed among the firms that signed the Committee for the Fiduciary Standard's oath? If you're having trouble finding language about fiduciary responsibilities (which may be articulated as "putting the clients' best interests first"), that could be a warning sign. But you won't know for certain until you try step three . . .

3. Ask about a fiduciary oath.

When it comes to asking about a fiduciary oath, it's a good idea to be direct with your questioning. You can ask about this over the phone (before you interview a financial advisor) or during an interview. Consider bringing a copy of the Committee for the Fiduciary Standard's oath to your interview meeting and asking the financial advisor to sign it. If they won't sign it, ask why. It's possible they have their own version, but it's more likely they are not a true fiduciary.

As with all important obligations and agreements, it is imperative to obtain a written statement of fiduciary responsibilities before agreeing to work with a financial advisor. If the person you're interviewing is a true fiduciary, they will not be offended if you ask them to sign a fiduciary oath. In fact, they'll probably be pleased that you value a fiduciary's efforts to place the client's interests first.