

### **THE FIDUCIARY OBLIGATIONS OF AN OIL COMPANY LANDMAN**

Fiduciary (pronounced fah-doo-shee-airy) refers to a trust. It is an obligation one person has to act in the best interest of another. For example, if you call a real estate agent because you want to sell your farm, the realtor has a fiduciary obligation toward you. He is obligated to tell you the candid truth about the value of your land, as well as any known complications that could arise throughout the sale process. If he tells you your land is worth less than it really is, just so he can make a quick sale and grab a commission, he would be renegeing on his fiduciary obligation. And any realtor who knowingly does such a thing, could be subject to prosecution.

Fiduciary obligations include: The responsibility to obey instructions, maintain undivided loyalty, ensure confidentiality, and fully disclose what is known about a situation.

In Saskatchewan, and in Alberta, it is still legal for a real estate agent to represent both the seller and the buyer in a single transaction, but in many places it's against the law. Why? Because no one can suck and blow at the same time. In other words, it is impossible for a realtor to faithfully and accurately represent the interests of the buyer and the seller at the same time. A realtor can certainly facilitate a transaction between the two, but that's an entirely different thing

than discharging a fiduciary obligation to a client. Even the Real Estate Council of Alberta points out that when buyers and sellers fully understand the implications of having a real estate agent represent both parties, most people don't want anything to do with it.

Other professions that hold fiduciary obligations include lawyers (toward their clients), corporate directors (toward the company's shareholders), and oil company land agents (toward the oil company that pays them and sends them to your farm to negotiate surface leases and pipeline right of ways).

Some land agents claim that although they do have a fiduciary obligation toward their employer, they nevertheless hold a "trust" toward the landowner. Just how that trust is supposed to be discharged is never fully explained. And the fact that we at The Farmers' Landman regularly encounter farmers who weren't fully informed about long-term liability issues when they were originally asked to sign a surface lease, or who have been financially short-changed, speaks volumes about the way this "trust" has been discharged over the years.

This is not to suggest that every oil company land agent should be looked upon with suspicion. It is merely to point out

that their fiduciary obligation is not to you—the farmer—but to the company that employs them.

How then should a farmer respond when an oil company's land agent comes calling? For starters, don't assume the land agent is going to tell you everything you might want to know. Second, when the agent starts talking money, using phrases like "standard offer," don't assume the amount is non-negotiable. Most farmers would never accept as gospel the first price a tractor salesman or car salesman throws out. So don't be afraid to question a land agent's offer. Lastly, if you can, spend a bit of time getting better informed.

For information about landowner compensation on surface leases and to obtain contact information about provincial and regional surface rights groups, visit [www.FarmersLandman.com](http://www.FarmersLandman.com).

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