

## March 2009 *MoneyMinute* – The Role of Fiduciary

By Rich Chambers, CFP®

The financial advice industry has certainly received many well-deserved black eyes recently. On a personal note, the most disappointing feature of my chosen career has been to discover that many people I talk to recoil when I mention that I am a “financial planner.” It’s news like the Bernie Madoff and Allen Stanford swindles that reminds me why that is so. At this point, it’s only rational that everyone should be wary of the financial services industry.

What about fiduciary responsibility? While that alone won’t protect you from a fraudster like Madoff or Stanford; it’s vital to understand who does have a legal responsibility to put your interests first in a financial advice relationship and who doesn’t. For excellent tips on protection from fraudsters like Madoff and Stanford, see the recent *MoneyMinute* – “[The Madoff Scandal](#).”

To understand the role of a fiduciary, I have enclosed a recent article from *InvestmentNews Daily*:

### **When Your Financial Advisor Accepts the Role of Fiduciary, You Have a Foundation for Trust**

In the world of financial advisors there are myriad labels, certifications, registrations, and other terms that tend to be meaningful only to industry insiders. But one distinction could be crucial: An advisor bound by contract or law to serve as a “fiduciary” is obligated to act solely in your best interest. That’s different from others who may seem to work for you but in fact owe primary allegiance to the companies that pay them.

With other professionals, such as lawyers and CPAs, there’s typically a fiduciary responsibility that requires them to act in clients’ best interests.

But for financial advisors, fiduciary status is not yet standardized or guaranteed. So while you may think your advisor offers unbiased advice, he or she is probably receiving a commission for selling you products. To complicate matters, even a fee-based advisor who charges for advice may not be acting solely in your interest.

Not surprisingly, there’s widespread confusion among consumers on this point. According to a recent survey by a major financial services firm:

- More than half of the investors interviewed believed both stockbrokers and Registered Investment Advisors (RIAs) have an obligation to act in the client’s best interests.
- Three out of four investors didn’t realize that only independent RIAs have a fiduciary duty to their clients.

RIAs must inform clients of potential conflicts of interest, and they're legally obligated to act as a fiduciary. They have a fiduciary duty to act in their clients' interest at all times. Stockbrokers don't have the same obligation. Brokers must make recommendations that are suitable but are not required to adhere to the higher standard of care—to always do what's in your best interest—as a fiduciary.

The distinction between an advisor who is a fiduciary and one who is not could be critical when weighing an advisor's recommendations. There may be a hidden agenda—for example, if an advisor is receiving better commissions for selling you one mutual fund instead of another.

Rules recently clarified by the Securities & Exchange Commission permit brokers to give you investment advice on a fee basis and not act as a fiduciary. In these instances, a broker can only give you advice about one or two issues—such as your retirement plan or investing. If a broker wishes to give you comprehensive financial advice that spans insurance, taxation college planning and estate planning as well as investing and retirement planning, the broker must accept his or her role as a fiduciary to you. He must disclose that he will begin giving you advice as a fiduciary and then tell you when he has stopped acting as a fiduciary and reverted back to his role as your stockbroker.

Working with someone who is a fiduciary, or will sign an agreement to act as a fiduciary, doesn't guarantee you'll profit from the advisor's recommendations. But it does give you a greater assurance that you're both sitting on the same side of the table.

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