

# Breach of Confidential Relationship Causing Financial Harm

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## Contents

### Summary

Under Washington State law, a claim for breach of close confidential relationship that causes financial harm requires proving four essential elements:

- 1) the existence of a confidential relationship where one person has gained the confidence of another and purports to act or advise with the other's interest in mind,
- 2) breach of that relationship through bad faith conduct,
- 3) resulting financial injury or harm, and
- 4) proximate causation between the breach and the damages.

Washington courts have established that confidential relationships arise from personal rather than professional connections and require more than mere friendship or family ties—there must be evidence of special confidence reposed in advice and the advisor's acceptance of a role to act in the principal's interest.

Financial harm must be proven with clear, cogent, and convincing evidence.

Remedies may include

- constructive trust,
- restitution,

- disgorgement, or
- monetary damages.

## Legal Framework for Confidential Relationships

Washington courts recognize that breach of confidential relationship claims are closely related to undue influence claims and are developed through judicial precedent rather than statutory authority. The foundational case [KeyCite Yellow] Flag McCutcheon v. Brownfield, 2 Wash.App. 348 (1970) established the basic framework for analyzing confidential relationships in the context of undue influence that continues to govern these claims today. The court defined a confidential relationship as existing "when one has gained the confidence of the other and purports to act or advise with the other's interest in mind." [KeyCite Yellow Flag] McCutcheon v. Brownfield, 2 Wash.App. 348 (1970). This relationship is "particularly likely to exist where there is a family relationship," but family ties alone are insufficient to establish the necessary legal standard. [KeyCite Yellow Flag] McCutcheon v. Brownfield, 2 Wash.App. 348 (1970).

The Washington Court of Appeals in [KeyCite Yellow Flag] Seattle Northwest Securities Corp. v. SDG Holding Co., Inc., 61 Wash.App. 725 (1991) clarified that confidential relationships "may exist either because of the nature of the relationship between the parties historically considered fiduciary in character" such as attorney-client or physician-patient relationships, "or the confidential relationship between persons involved may exist in fact." [KeyCite Yellow Flag] Seattle Northwest Securities Corp. v. SDG Holding Co., Inc., 61 Wash.App. 725 (1991). This distinction is crucial because it separates formal fiduciary duties arising from professional relationships from confidential relationships that develop through personal interactions and dependency.

## Essential Elements of the Claim

### Element One: Existence of Confidential Relationship

The first element requires establishing that a confidential relationship actually existed between the parties. [KeyCite Yellow Flag] Lewis v. Estate of Lewis, 45 Wash.App. 387 (1986) provides the most detailed analysis of this requirement, holding that "the essential elements of a confidential relationship are

- (1) that the parent reposes some special confidence in the child's advice and
- (2) that the child purports to advise with his parent's interests in mind." [KeyCite Yellow Flag] Lewis v. Estate of Lewis, 45 Wash.App. 387 (1986).

The court emphasized that while confidential relationships are "more likely to exist between parent and child, parentage alone does not create the relationship" and "additional factors are required." [KeyCite Yellow Flag] Lewis v. Estate of Lewis, 45 Wash.App. 387 (1986).

The McCutcheon court explained that parentage may furnish the occasion for a confidential relationship "when the parent may become dependent upon the child, either for support and maintenance, or for care or protection in business matters as well, or for both, and the child, by virtue of factors of personality and superior knowledge and the assumption of the role of adviser accepted by the parent, may acquire a status, vis-a-vis the parent, that will bring about the confidential relationship." [KeyCite Yellow Flag] McCutcheon v. Brownfield, 2 Wash.App. 348 (1970). This analysis requires examining the actual dynamics of dependency and advice-giving rather than presuming relationships based on family status.

Recent cases have reinforced that mere friendship is insufficient to establish a confidential relationship. In [KeyCite Yellow Flag] Kitsap Bank v. Denley, 177 Wash.App. 559 (2013), the court held that "although Lanterno was Correll's close friend, a friendship, on its own, does not establish a confidential relationship." [KeyCite Yellow Flag] Kitsap Bank v. Denley, 177 Wash.App. 559 (2013). The court distinguished confidential relationships, which "generally arise from personal relationships," from fiduciary relationships, which "arise from professional relationships." [KeyCite Yellow Flag] Kitsap Bank v. Denley, 177 Wash.App. 559 (2013).

## **Element Two: Breach of the Confidential Relationship**

The second element requires proving that the person in the confidential relationship breached their duty of good faith. Georges v. Loutsis, 20 Wash.2d 92 (1944) established that while "a confidential relationship demands the best of good faith in business dealings." there "must be a breach of good faith before a cause of action arises." Georges v. Loutsis, 20 Wash.2d 92 (1944) The court held that the confidential relationship alone "forms no ground for a cause of action" without evidence of actual misconduct. Georges v. Loutsis, 20 Wash.2d 92 (1944).

The breach typically involves the person in the position of trust using their influence for personal gain at the expense of the person who reposed confidence in them. In the context of undue influence, McCutcheon identified several factors that can evidence breach, including:

- taking advantage of the principal's impaired mental condition,
- acting contrary to the principal's prior expressed intentions,
- failing to provide independent advice, preparing documents through the advisor's personal attorney without separate consultation, and
- creating arrangements that leave the principal financially dependent.

[KeyCite Yellow Flag] McCutcheon v. Brownfield, 2 Wash.App. 348 (1970).

### **Element Three: Financial Injury or Harm**

The third element requires proof of actual financial injury resulting from the breach. Recent Washington cases have strengthened this requirement, with Matter of Estate of Kolesar, 27 Wash.App.2d 166 (2023) emphasizing that "in cases where a confidential relationship resulted in undue influence, there typically is evidence of some type of loss resulting from that relationship" and "there must be something more than the relationship." Matter of Estate of Kolesar, 27 Wash.App.2d 166 (2023). The court explained that "a focus on simply what was given up, without consideration of what was received, is not sufficient to establish that an unfair transaction occurred." Matter of Estate of Kolesar, 27 Wash.App.2d 166 (2023).

The financial harm element aligns with general breach of fiduciary duty requirements. [KeyCite Yellow Flag] Arden v. Forsberg & Umlauf, P.S., 193 Wash.App. 731 (2016) held that "The plaintiff must prove

- 1) the existence of a fiduciary duty,
- 2) a breach of that fiduciary duty,
- 3) resulting injury, and
- 4) that the breach of duty proximately caused the injury." [KeyCite Yellow Flag] Arden v. Forsberg & Umlauf, P.S., 193 Wash.App. 731 (2016).

The court emphasized that "an attorney can be liable for a breach of fiduciary duty only if the breach caused some injury." [KeyCite Yellow Flag] Arden v. Forsberg & Umlauf, P.S., 193 Wash.App. 731 (2016).

#### **Element Four: Proximate Causation**

The fourth element requires establishing that the breach of the confidential relationship proximately caused the financial harm. This element ensures that damages are not awarded for losses that would have occurred regardless of the breach. The Arden court confirmed that causation is an essential element of fiduciary breach claims, requiring proof "that the breach of duty proximately caused the injury." [KeyCite Yellow Flag] Arden v. Forsberg & Umlauf, P.S., 193 Wash.App. 731 (2016).

#### **Burden of Proof and Evidentiary Standards**

Washington courts apply heightened evidentiary standards to transactions between persons in confidential relationships. McCutcheon held that "because undue influence is treated in law as a species of fraud, evidence of a gift between persons in a confidential relationship must be clear, cogent and convincing." [KeyCite Yellow Flag] McCutcheon v. Brownfield, 2 Wash.App. 348 (1970). This elevated burden reflects the serious nature of the allegations and the potential for abuse in relationships involving trust and dependency.

When a confidential relationship is established, the burden of proof may shift in certain contexts. [KeyCite Yellow Flag] Lewis v. Estate of Lewis, 45 Wash.App. 387 (1986) explained that "generally, one seeking to set aside an inter vivos gift has the burden of showing the invalidity thereof," but "the burden shifts, however, if the donor and donee shared a confidential relationship." [KeyCite Yellow Flag] Lewis v. Estate of Lewis, 45 Wash.App. 387 (1986). In such cases, "the donee must then prove that a gift was intended and that it was not the product of undue influence." [KeyCite Yellow Flag] Lewis v. Estate of Lewis, 45 Wash.App. 387 (1986).

#### **Available Remedies**

Washington courts provide several remedies for proven breaches of confidential relationships. Venwest Yachts, Inc. v. Schweickert, 142 Wash.App. 886 (2008) explained that "a constructive trust is an equitable remedy that compels restoration where a party gains something for himself which, 'in equity

and good conscience, he should not be permitted to hold.'" Venwest Yachts, Inc. v. Schweickert, 142 Wash.App. 886 (2008). The court emphasized that "in deciding to impose a constructive trust, the question is whether the enrichment was unjust, not whether the holder of the property acted with bad motive or malicious intent." Venwest Yachts, Inc. v. Schweickert, 142 Wash.App. 886 (2008).

Courts may also order disgorgement of profits obtained through breach of confidential relationships, similar to other fiduciary breach remedies, though such awards require proof of the breach and improper gains. [NEED CITATIONS HERE]

## Distinguishing Confidential from Fiduciary Relationships

Washington courts carefully distinguish confidential relationships from formal fiduciary relationships. [KeyCite Yellow Flag] Kitsap Bank v. Denley, 177 Wash.App. 559 (2013) explained that confidential relationships "generally arise from personal relationships" while fiduciary relationships "arise from professional relationships." [KeyCite Yellow Flag] Kitsap Bank v. Denley, 177 Wash.App. 559 (2013). This distinction affects both the analysis of whether the relationship exists and the duties that flow from it.

The McCutcheon court noted that confidential relationships may exist either because of relationships "historically considered fiduciary in character" such as "trustee and beneficiary, principal and agent, partner and partner, husband and wife, physician and patient, attorney and client" or because "confidential relationship between persons involved may exist in fact." [KeyCite Yellow Flag] McCutcheon v. Brownfield, 2 Wash.App. 348 (1970). The factual confidential relationships require case-by-case analysis of the actual relationship dynamics.

## Recent Developments

Recent Washington cases show important developments in applying confidential relationship principles. Matter of Estate of Kolesar, 27 Wash.App.2d 166 (2023) in 2023 emphasized that courts require evidence of actual loss rather than just unbalanced transactions, stating that "there must be something more than the relationship" to establish a valid claim. This represents a trend toward requiring more concrete evidence of harm beyond the existence of the relationship itself.

Mueller v. Wells, 185 Wash.2d 1 (2016) in 2016 refined the analysis to focus on whether there exists "a level of trust that leads the testator to believe that the beneficiary is acting in his or her best interests, creating an opportunity for the beneficiary to exert undue influence." [KeyCite Yellow Flag] Mueller v. Wells, 185 Wash.2d 1 (2016). This formulation emphasizes the practical opportunity for abuse rather than abstract relationship categories.

The 2016 [KeyCite Yellow Flag] Arden v. Forsberg & Umlauf, P.S., 193 Wash.App. 731 (2016) decision clarified that breach of fiduciary duty claims, which share similar elements with confidential relationship breach claims, require proof of actual resulting damages, not just the breach itself. This reinforces the trend toward requiring concrete proof of financial harm rather than presuming damages from the relationship breach.

## Related Issues

**Undue influence claims** often arise together with confidential relationship breach claims, particularly in estate and gift contexts where the confidential relationship creates a presumption of undue influence

**Constructive trust claims** frequently sought as an equitable remedy when someone breaches a confidential relationship and obtains property or benefits they should not retain in good conscience

**Professional malpractice** when confidential relationships arise from professional services like attorney-client or physician-patient relationships, creating overlapping duties and potential claims

**Elder abuse** in cases involving older vulnerable adults where family members or caregivers exploit confidential relationships for financial gain, often triggering both civil and criminal liability

## Commentary on This Question

A claim for breach of a confidential or fiduciary relationship causing financial harm generally requires showing

- 1) the existence of a confidential or fiduciary relationship,
- 2) a breach or abuse of that duty, and
- 3) resulting damages proximately caused by the breach.

A confidential relationship arises when one party reposes trust and confidence in another who holds a superior or dominant position, resulting in a disparity of bargaining power or influence.

The duty entails

- acting with loyalty and care,
- avoiding self-dealing, and
- not profiting from the relationship without consent.

Courts examine the totality of circumstances to establish both the relationship and its breach; mere breach of oral agreements absent fraud, mistake, or confidential relationship is insufficient to impose equitable remedies such as constructive trusts.

- 79 AMJUR POF 3d 269,
- BOGERT § 482.

Under Washington law and similarly in other jurisdictions, plaintiffs must prove damages resulting from the breach and a proximate causal link to the misconduct. Constructive fraud claims may not require actual intent to deceive but arise from breach of duty within a relationship of trust, inducing justifiable reliance and injury. The breach can be inequitable conduct, self-dealing, or failure of loyalty, often supported by evidence of dominance or overmastering influence. The terms fiduciary and confidential relationships are closely related, with fiduciary duties often implying disclosure and loyalty obligations enforceable by law.

- 77 COA2d 215,
- BOGERT § 482.

The above response is AI-generated and may contain errors. It should be verified for accuracy.