

**California Licensed
Foresters Association**

**Guide to
Business Practices
For Registered
Professional Foresters**

FORWARD

The idea for this guide originated with the Professional Foresters Examining Committee (PFEC), which was created under law by the California State Board of Forestry to oversee the registration, examination, and licensing of Registered Professional Foresters (RPFs). In 1994, the PFEC raised the concern that, in a large percentage of the cases brought before it questioning RPF conduct, the focus of the inquiry was not on the RPF's judgment in forestry practice, but rather on how the related business transaction was conducted. There seemed to be, in many of these instances, a lack of familiarity with California law pertaining to agency and fiduciary responsibility. Also, lack of a clear understanding of the nature of the business relationship between the RPF and his or her client often led to dispute and conflict.

While the Professional Foresters Law sets general standards of conduct for RPFs, it provides little in the way of practical guidance to RPFs concerning their relationships with clients, employers, and the public. To address the need for such guidance, and in response to the PFEC's concerns, the California Licensed Foresters Association has published this Guide to Business Practices. Its goal is to promote a better understanding of standards of professional conduct in business affairs among RPFs and those with whom they do business.

INTRODUCTION

As with many professions, the practice of forestry often involves providing advice to other parties, or planning and implementing projects on their behalf. While this is commonly true of consulting foresters who are hired by clients such as landowners, it may also be true for foresters employed by timber companies and government agencies, in that they act in the interests of their employer. Depending upon the nature of the business relationship, specific responsibilities may be incurred by foresters when conducting such business on behalf of others. Even a forester working solely for his own benefit may have certain responsibilities to others by virtue of holding a professional license.

It is the nature and conduct of these professional relationships that is the subject of this publication. Included is a discussion of *agency* and *fiduciary responsibility*, two important concepts based in business law; the elements essential to a contract; and steps to take to analyze the potential for a conflict of interest in business situations. This guide also outlines RPF responsibilities under the Professional Foresters Law (Public Resources Code Section 750 *et seq.*). Consideration of practices not required by law, which may be applicable in certain circumstances, will also be discussed.

By observing the guidelines provided here, the RPF should reduce the potential for embarrassing and

potentially costly misunderstandings between himself and his client.

AGENCY

An important consideration in the relationship between the RPF and the client is whether or not the RPF is acting as an agent. An *agent* is one who represents another, called the *principal*, in dealings with third parties. An agent acts in the interests of his/her client in-lieu of the client's presence, veritably a stand-in. Every act which may be done by any person may be done by an agent of such person, unless specifically limited by law (See California Civil Code Sec. 2305).

The existence of an agent/principal relationship is determined by the duties of the RPF in the business relationship. Common situations where an RPF acts as an agent include selling or buying timber on behalf of a client, preparing a Timber Harvest Plan or other permit or application for a landowner or Licensed Timber Operator, and subsequently dealing with the Department of Forestry or other agency on his behalf.

The California Civil Code (Section 2295 *et seq.*) defines strict and specific obligations on the part of the agent to protect and further the interests of the principal when representing the principal. These obligations include:

- Exercising reasonable skill and diligence in carrying out work to be performed. That is, the agent must not be negligent. Failure to use reasonable skill and diligence may result in the agent being liable for losses sustained by the principal. Note that the RPF acting as agent is held to this higher standard under the Civil Code than the "gross negligence" standard stipulated in the Professional Foresters Law.
- Strictly avoiding any conflict of interest without *full disclosure* (see below).
- Acting in a *fiduciary* capacity with respect to the principal (see below).

It is also important to note that there need be no written or spoken agreement to enact an agent/principal relationship. All that is required is conduct by each party manifesting acceptance of the relationship.

FIDUCIARY

A *fiduciary* is broadly defined as a person having the duty to act primarily for another's benefit, requiring scrupulous good faith and candor, founded upon trust of confidence (Black's Law Dictionary). *The RPF in any agent/principal relationship is in a fiduciary relationship with his client.*

The status of being a fiduciary creates an obligation to put the interests of the client above all others, including one's own. It requires undivided service and loyalty to the principal, and acting with integrity and good faith on the principal's behalf. The agent must not take advantage of the principal in any way, or act in his/her own self interest. The exception to this rule is when the principal may be acting dishonestly or illegally.

A common task of a fiduciary is to receive or disburse money or property on behalf of a client. In this circumstance, the following guidelines should help an RPF to act appropriately:

- Promptly acknowledge the receipt of funds or property for or from the client, preferably in writing.
- Identify and label properties of the client upon receipt and place them in safe keeping as soon as possible.

- Maintain complete records of all funds and other properties coming into the possession of the RPF, and render the appropriate accounting to the client within ten working days of receipt of a request for such an accounting.
- Avoid commingling funds by not placing any funds belonging to the client in accounts containing funds belonging to the RPF or his/her firm. Commingling of funds is allowable only under strictly defined circumstances, such as when joint funds reasonably sufficient to pay bank charges or other account charges are necessary. Establish a separate bank account to hold client funds. A separate account for each client is not necessary.
- When funds belonging in part to a client and in part, presently or potentially, to the RPF must be commingled, the portion belonging to the RPF must be withdrawn at the earliest reasonable time after the RPF's interest in that portion becomes fixed. Disputes over rights to commingled funds shall be resolved prior to the RPF withdrawing any funds.
- Promptly pay or deliver a client's funds, or other properties in the possession of the RPF, to the client when the client is entitled to receive them.
- Maintain the confidentiality of clients' business transactions, opportunities and activities where required.

CONFLICT OF INTEREST

As we have noted, the RPF in an agent/principal relationship is acting as a fiduciary and is obligated to act in the best interests of the client. A *conflict of interest* occurs when an RPF cannot completely and fully meet this obligation because the RPF has an interest in a particular business transaction or project, or a second client of the RPF's has an interest which differs from that of the first, such that they affect or interfere with one another. A conflict of interest occurs whenever the RPF places him/herself in a position that is in any way adverse to that of either client (See Civil Code Sec. 2306).

Court decisions pertaining to the responsibilities of agents in situations where there is a conflict of interest provide a body of law from which guidelines for RPF behavior may be drawn. An agent cannot take advantage of a fiduciary relationship, or allow his/her interest to be adverse or antagonistic to that of the principal. The agent is bound to disclose the facts of any transaction, and cannot make a secret profit. If the agent breaches his duty as fiduciary, he may be held liable for damages suffered by the principal.

The key to dealing with a potential conflict of interest is to *fully disclose* to your client(s) all the potentially conflicting interests held by the RPF or by other clients. This disclosure should always be provided in writing. If the principal later claims that the RPF took advantage of the situation to gain personally, the burden of proof lies heavily on the RPF to prove that s/he did not cheat or defraud the principal. In this instance, the law presumes that the RPF is guilty; s/he must prove otherwise.

Recognizing a potential conflict of interest requires a diligent assessment of the interests of all concerned parties. There may even be actions taken by the RPF which do not result in any gain to the RPF or another of his clients, but may be perceived by others as a conflict or a breach of fiduciary trust. An illustration is where the RPF selects a contractor to perform work for the principal on the basis of the contractor's quality of work, rather than having submitted the lowest bid. In such instances the RPF should eliminate the possibility for the perception of a conflict by disclosing to the principal the rationale for the action and the benefit to the principal.

REQUIREMENTS SPECIFIC TO THE PROFESSIONAL FORESTERS LAW

The responsibilities of an RPF under the Professional Foresters Law can be grouped into three general categories. These are:

- *Adequacy of the RPF's product:*
 - Work product must be accurate and complete.
 - The RPF is responsible for the product of non-RPFs working for him or her.
 - The RPF may provide only those services s/he is qualified to provide.
 - The RPF must engage other experts when necessary.
- *Broad standards of conduct for the RPF (More information regarding standards of conduct may be found in policy statements available from Foresters Licensing):*
 - RPF applicants must be of good moral character with a reputation for honesty and integrity.
 - The activities of an RPF must not constitute deceit, misrepresentation, fraud, material misstatement of fact, incompetence, or gross negligence. In addition, notwithstanding other penalties under law, a RPF convicted of a felony substantially related to the practice of forestry is subject to disciplinary action against his or her registration as a forester.
- *Public interest and RPF's duties to public resource values:*
 - The Professional Foresters Law arose directly from the Legislature's intent to protect the public's interest in the management of forest resources in the State. It is from this interest that the Board of Forestry derives its power to regulate forestry and, simultaneously, the foresters it licenses. It is important that the RPF recognize the duty inherent in the license to protect the public interest by meeting the intent of the Act, and by practicing prudently.

OTHER BUSINESS RELATIONSHIPS

The RPF should be aware of other relationships to clients or interested parties which may arise during the course of his/her professional activities. Depending upon the nature of these relationships, there may be specific obligations to clients or some level of professional responsibility to other parties of interest that should be understood and acknowledged:

- *Non-agent relationships:* These relationships can be exemplified as data gathering functions, such as conducting inventories, or writing a management plan, and may or may not be fiduciary. (However, a fiduciary relationship usually exists in inventories, since the RPF must not release the data to anyone but the client or a client designated recipient.)
- *Responsibilities to interested parties:* The RPF must also be aware of his/her responsibilities to parties associated with a project, but for whom the RPF does not directly work. These could include utilities, the timberland owner or another indirect person with a real interest in the land, timber, or mineral rights.

While not defined in law, the RPF may have a professional responsibility to inform interested parties in a business transaction whose interests s/he represents. The RPF must not allow an interested party to mistakenly believe that s/he is representing them when that party is not the RPF's client. This may apply particularly to an RPF's relationship with landowners who are party to a transaction but are not the RPF's client.

CONTRACTS

Contracts may be oral, except where required by statute to be in writing. Regardless, a written contract is

preferable for many reasons, and provides the best protection for both the RPF and the client. For any arrangement wherein an RPF is to provide professional services to a client, it is highly recommended that the work to be performed by the RPF and other terms and conditions of the arrangement be fully described in a written contract.

Examples of the elements of any written contract between an RPF and a client for professional services are:

- The parties to the agreement.
- The object or purpose of the contract.
- A clear description of the duties of the RPF, including services to be performed and the product to be provided.
- A clear description of the duties of the other party.
- A termination date.
- Warranties regarding property or timber ownership, right to cut, etc.
- Insurance and indemnity issues.
- Amount and terms of payment for services.
- Conditions relating to breach or termination.

Note that in a court of law, ambiguities in a contract will be construed against the drafter of the contract. The language should be clear and concise. If the RPF has any doubts or questions about the intent or implications of a contract's language, s/he should have an attorney review the contract prior to signature and execution.

FOR FURTHER STUDY

"A Discussion Guide for the SAF Code of Ethics", Society of American Foresters, Bethesda, Maryland, n.d.

"Prudent Professional Conduct for RPFs", Professional Foresters Examining Committee of the California State Board of Forestry, Sacramento, CA., September 1994.

Policy Statements adopted by the Board of Forestry on August 9, 1995. These policy statements prescribe specific procedures of the licensing office for Professional Foresters. A copy can be obtained from that office.

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