



**CalPERS Board Offsite
July 16, 2025**

A Practical Guide to Fiduciary Duties

Tiffany R. Reeves



Tiffany R. Reeves

Partner

Minneapolis

tiffany.reeves@faegredrinker.com



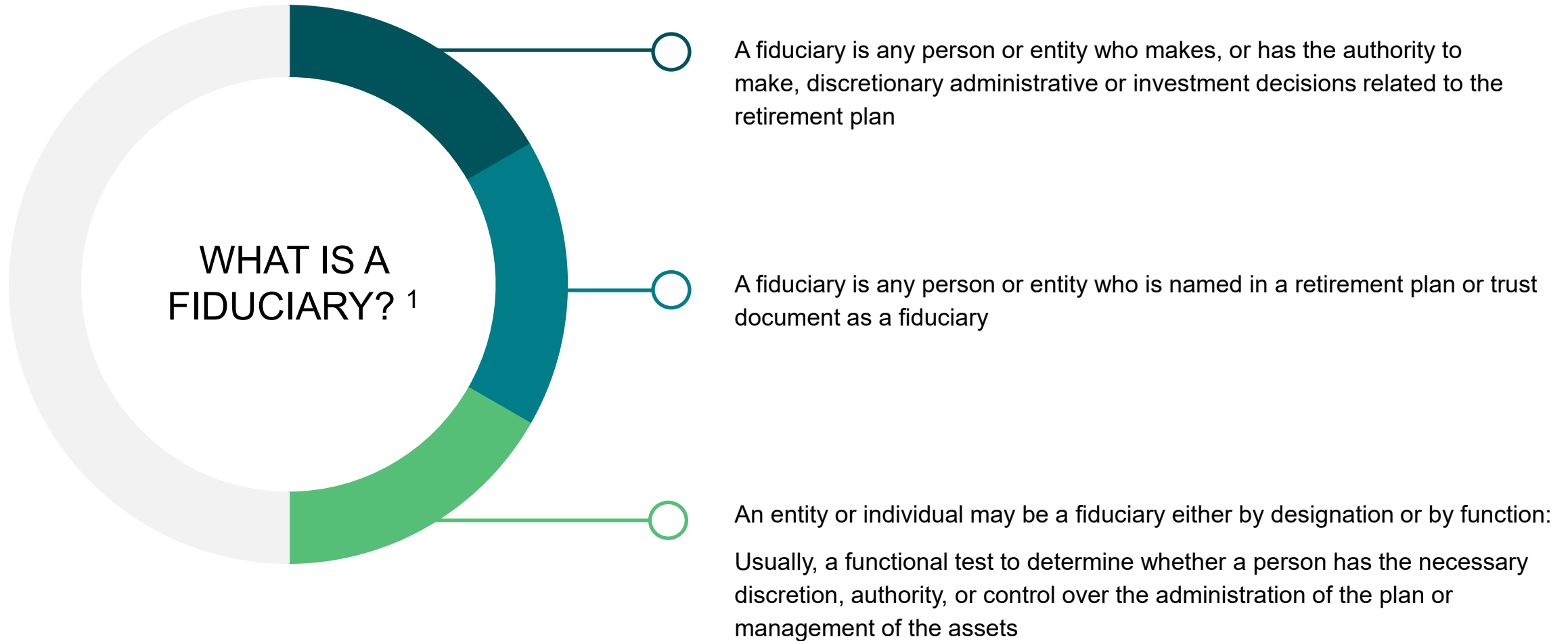
Tiffany Reeves leads the Institutional Investor practice at Faegre Drinker. Tiffany's superpower is helping boards and executives to create the relationships, culture, structures and systems to effectively manage risk and meet the organization's strategic and financial objectives. She is a trusted adviser to institutional investor clients in domestic and international private investments. Tiffany's experience extends to a broad range of alternative investment strategies, including buyouts, credit, venture, real estate, infrastructure, energy and natural resources. She also advises institutional investor clients on best practices, including on fiduciary, governance, compliance, legislative and general administration matters. She regularly advises clients on private equity fund due diligence, U.S. regulatory developments, custody and securities lending matters, secondary transactions, sustainability matters and corporate governance. Tiffany has substantial sustainable investment experience and has guided industry-leading institutional clients through key decision-making around ESG integration and investment stewardship. Reeves is a thought leader and frequent speaker on the topic of the intersection between fiduciary duties and sustainable investment considerations.

Tiffany previously served as the chief legal officer and deputy executive director for a defined benefit public employee retirement system, where she was responsible for a variety of investment matters including negotiation and review of private equity, private real estate and public market investments.

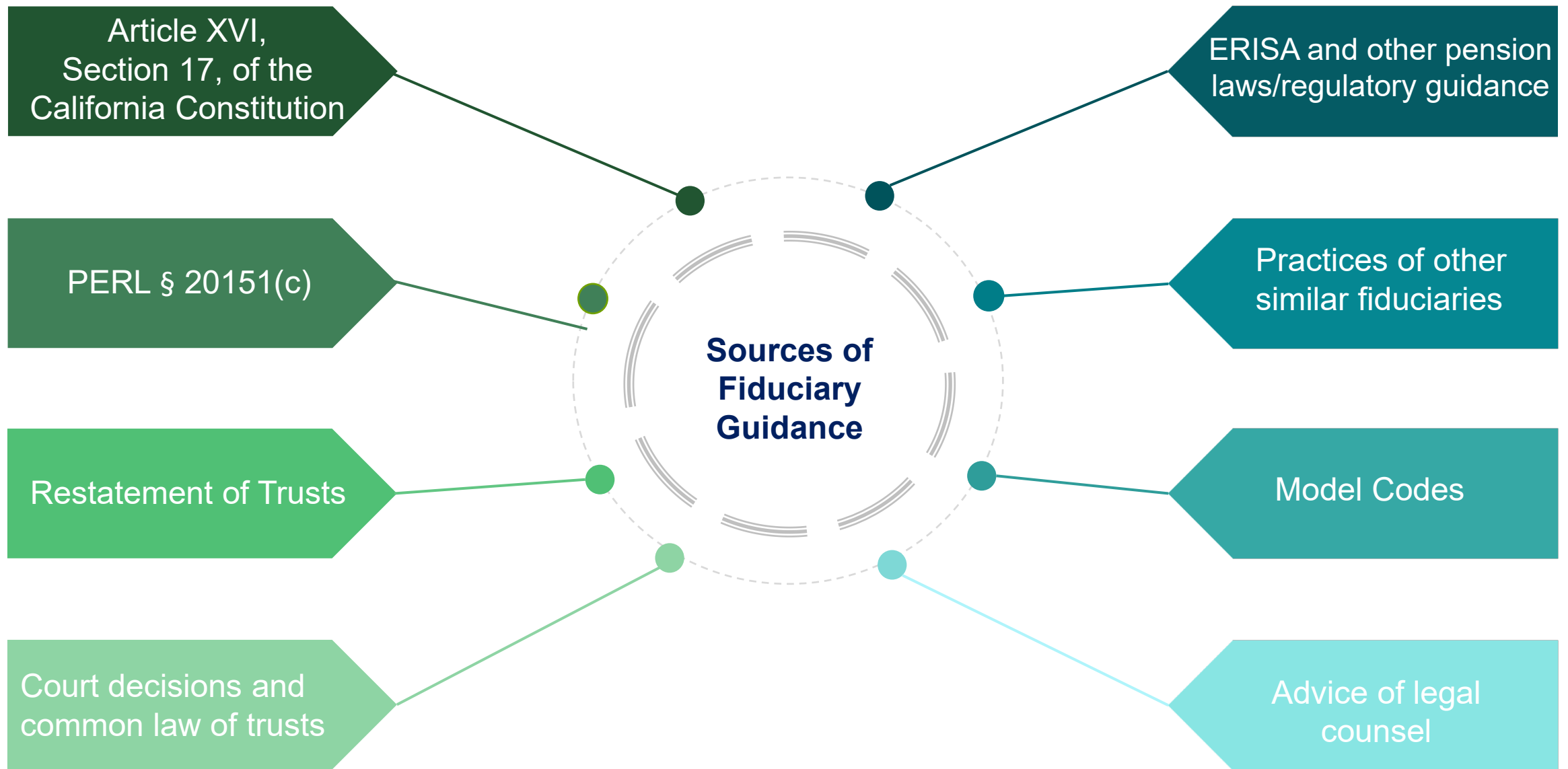
Reeves holds a J.D. and B.A. from the University of Oregon, and M.A. from Northwestern University. She is licensed to practice law in Illinois, Minnesota, Texas, and Wisconsin. [View Tiffany's full biography.](#)

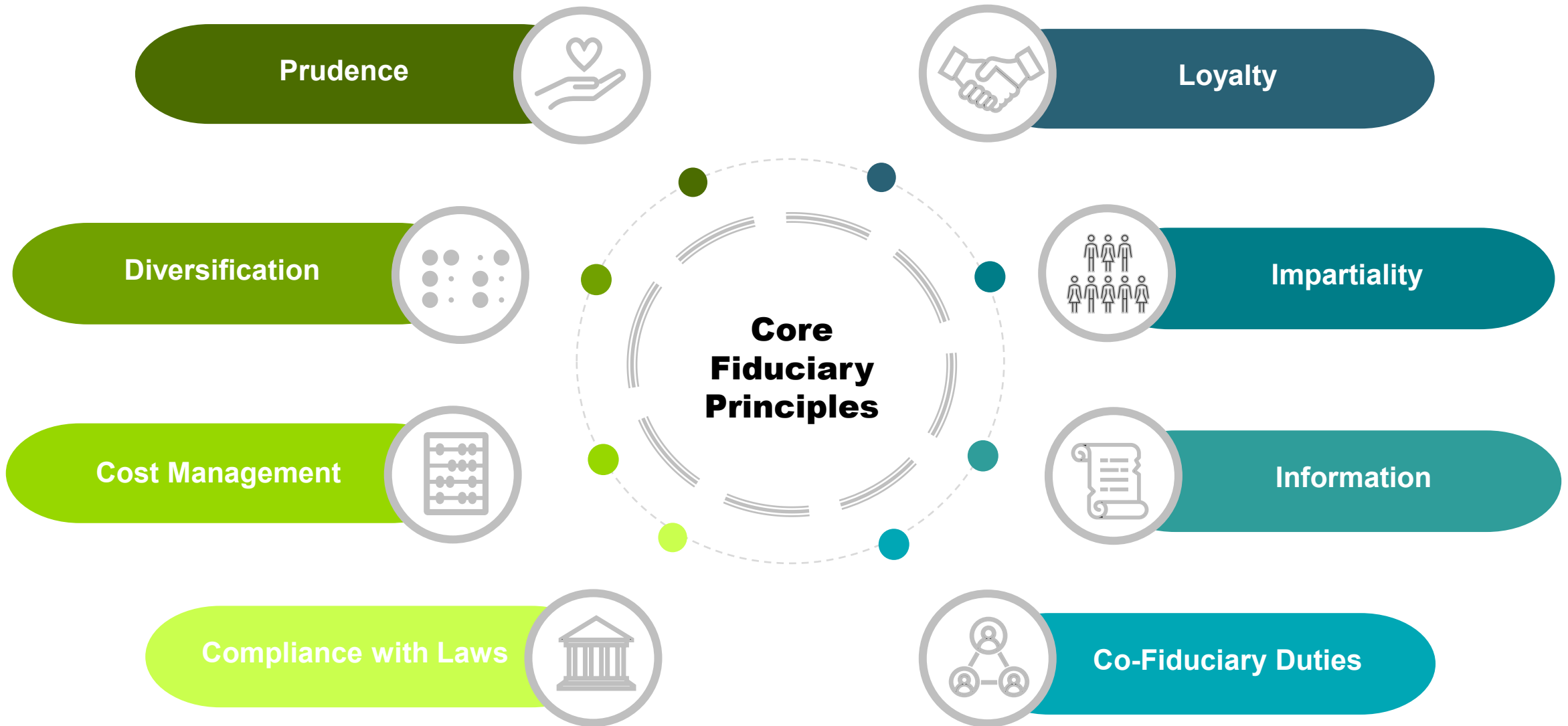


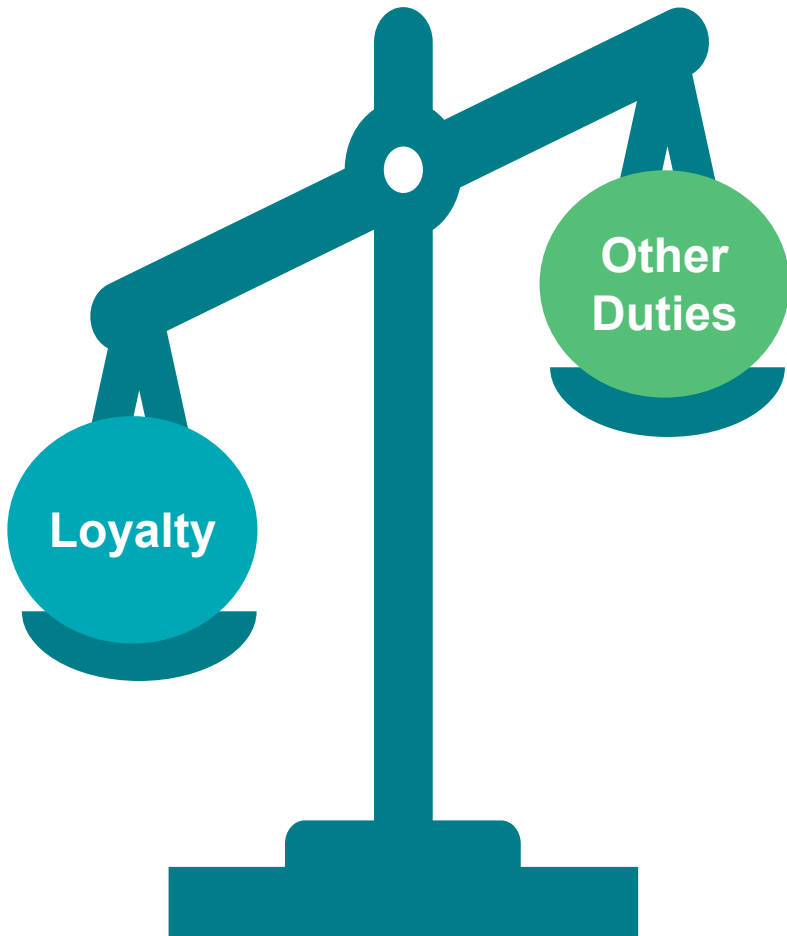
Fiduciary Responsibility:



1. Internal Revenue Code § 4975 (e)(3); ERISA § 3(21)



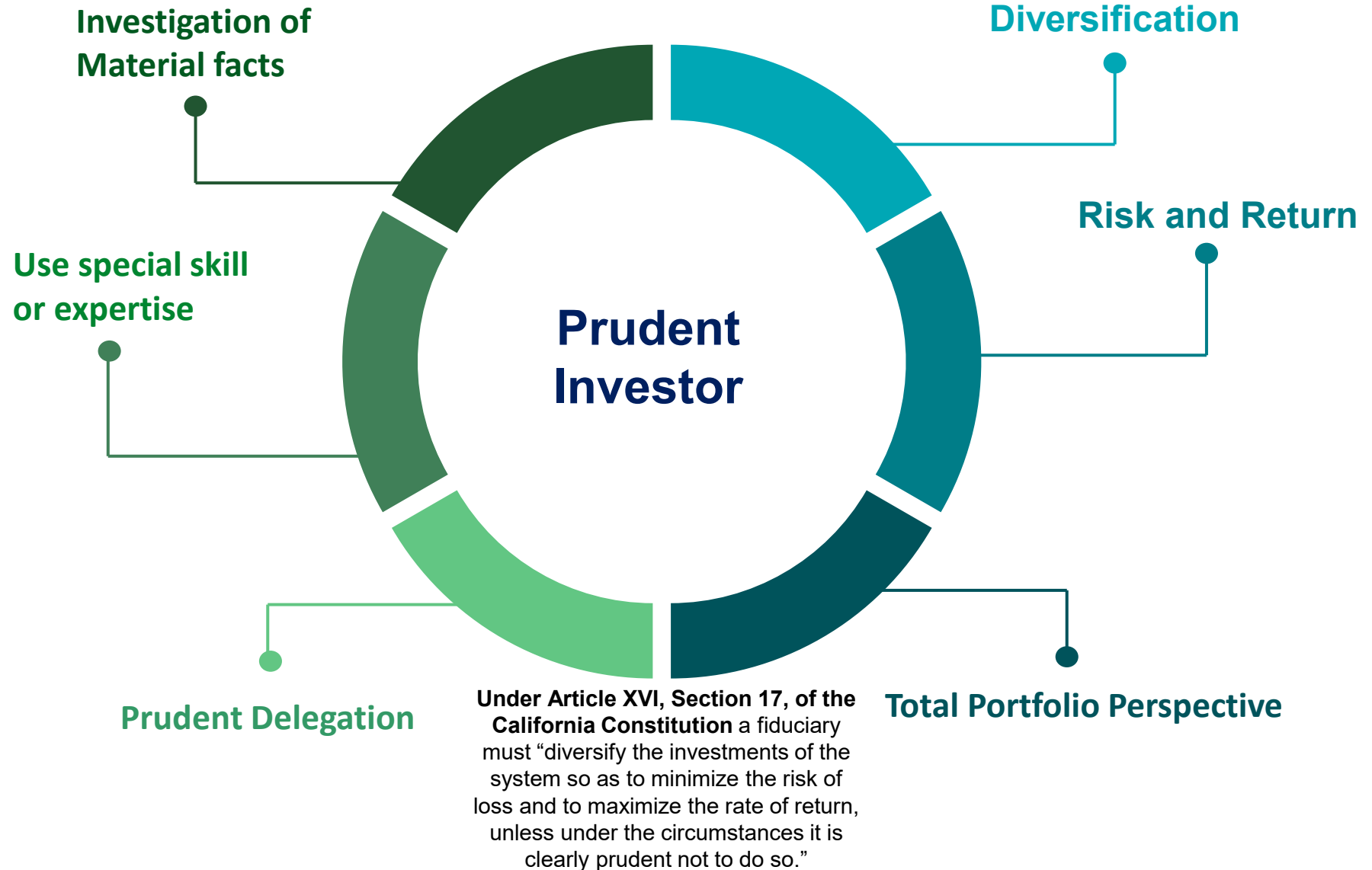




“A retirement board’s duty to its participants and their beneficiaries shall take precedence over any other duty.”

California Constitution
Article XVI - Public Finance Section 17

Fiduciary Principle: Prudence





Standard of Care = Prudent Expert

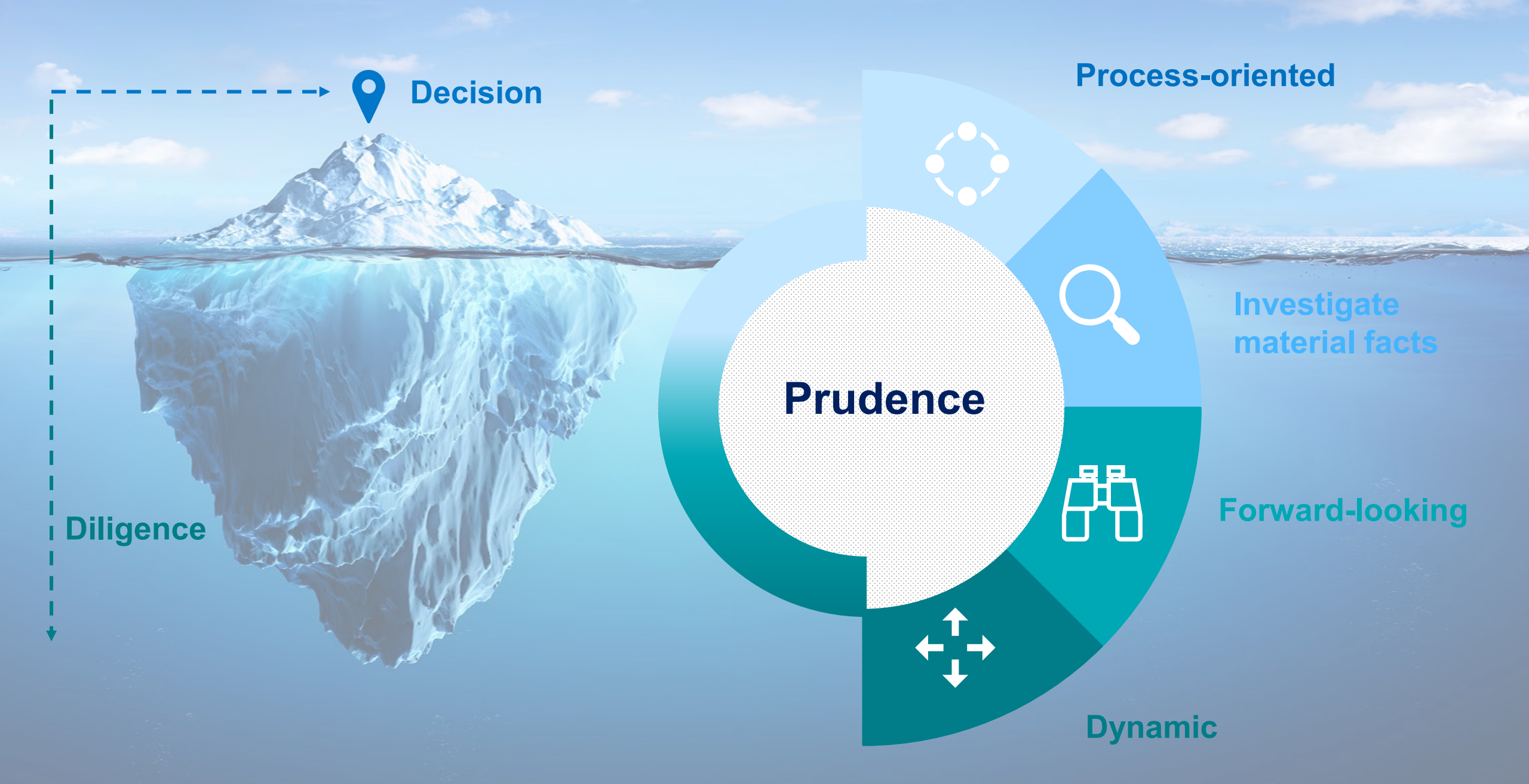
PERL § 20151(c)

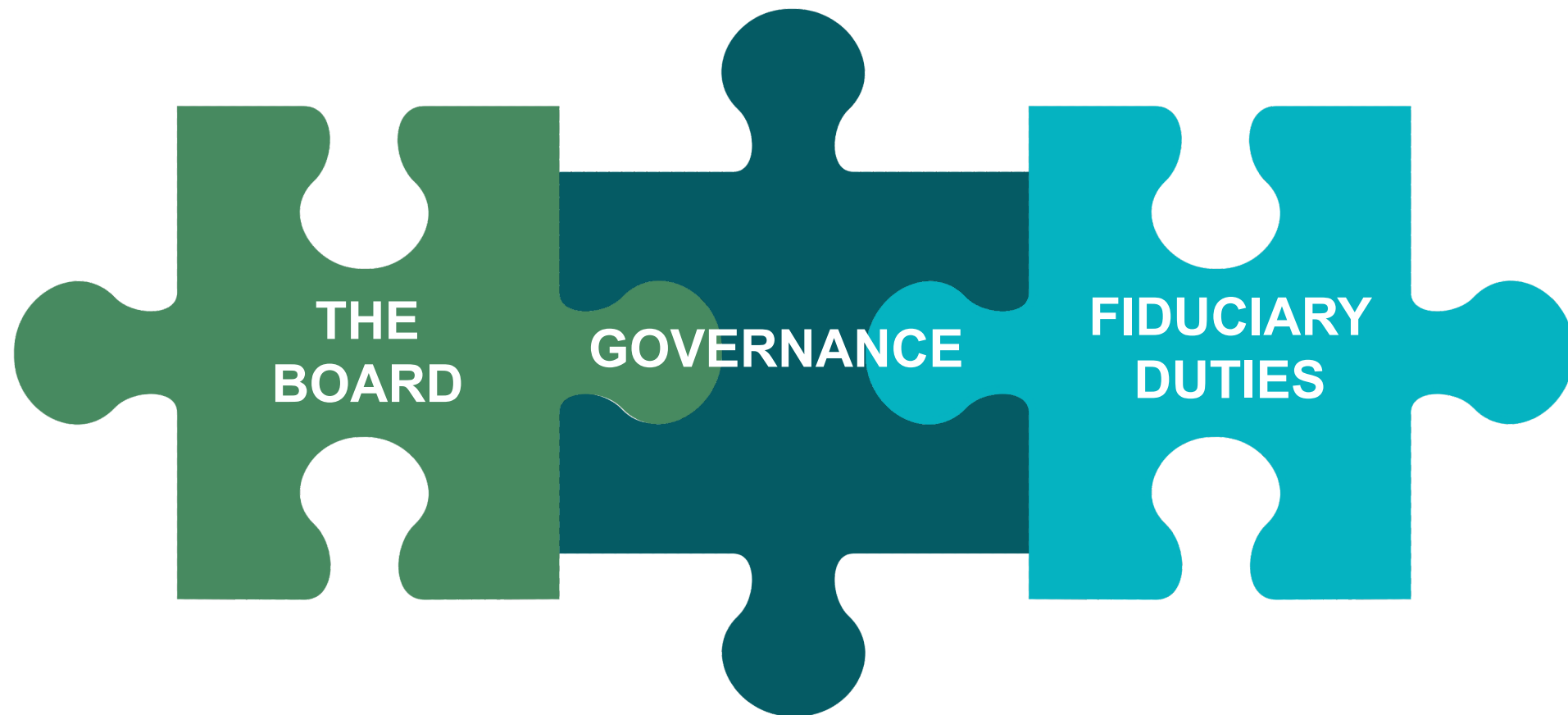
- The board and its officers and employees shall discharge their duties with respect to this system solely in the interest of the participants and beneficiaries...[b]y investing with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an enterprise of like character and with like aims

Article XVI, Section 17, a fiduciary must discharge its duties:

- With the care, skill, prudence, and diligence then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims







Governance



- Governance is the body of rules, practices, and processes that facilitate the execution of fiduciary duties.
- Board decision making is a collective process.
- Good governance requires effective structure, policies, and processes.
- Several studies have shown that effective governance practices can improve public pension investment returns by 1 - 3% annually.
- Although many trust entities operate under similar structures and statutes, each must develop its own governance policies and processes that are appropriate for the unique characteristics of the organization.

Fiduciary Principle: Loyalty

The Duty of Loyalty Requires:

Undivided Loyalty

- A fiduciary must act “solely in the interest of the participants and beneficiaries” – meaning *current and future* beneficiaries.
- No hierarchy of considerations – it’s all about the beneficiaries – today and tomorrow.

Fair Dealing

- Fiduciaries must deal with beneficiaries fairly.
- “Conduct in administering a trust cannot be influenced by a trustee’s personal favoritism.” [Restatement of Trusts 3rd, s. 79, Comment b]
- Communicate to beneficiaries all material facts.

No Self Dealing

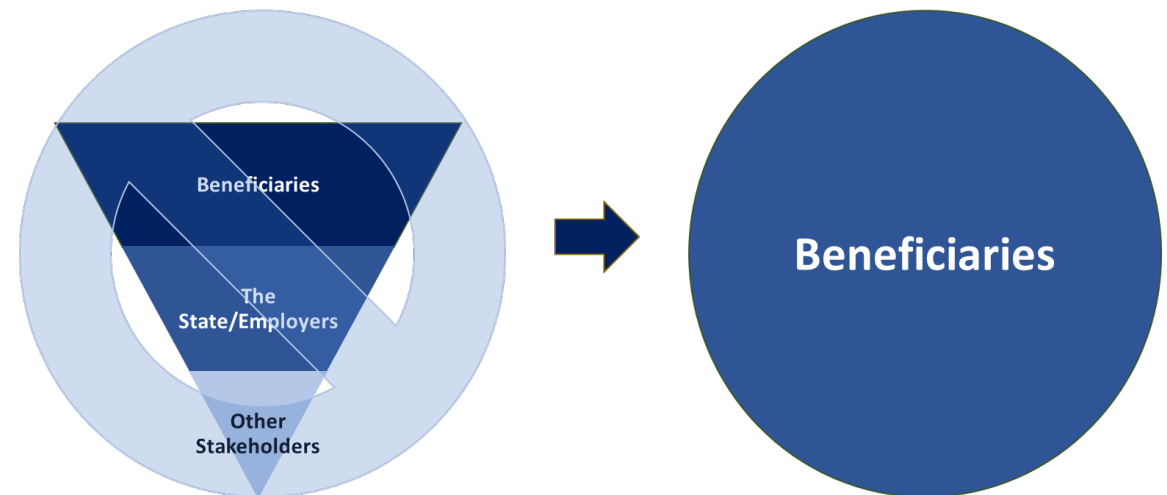
- No transactions involving trust property (or affecting trust property) if it is for the fiduciary’s personal benefit.
- Avoid conflicts of fiduciary duty and personal interest.
- Avoid transactions that may cause future conflict between fiduciary duty and personal gain.

Fiduciary Principle: Loyalty

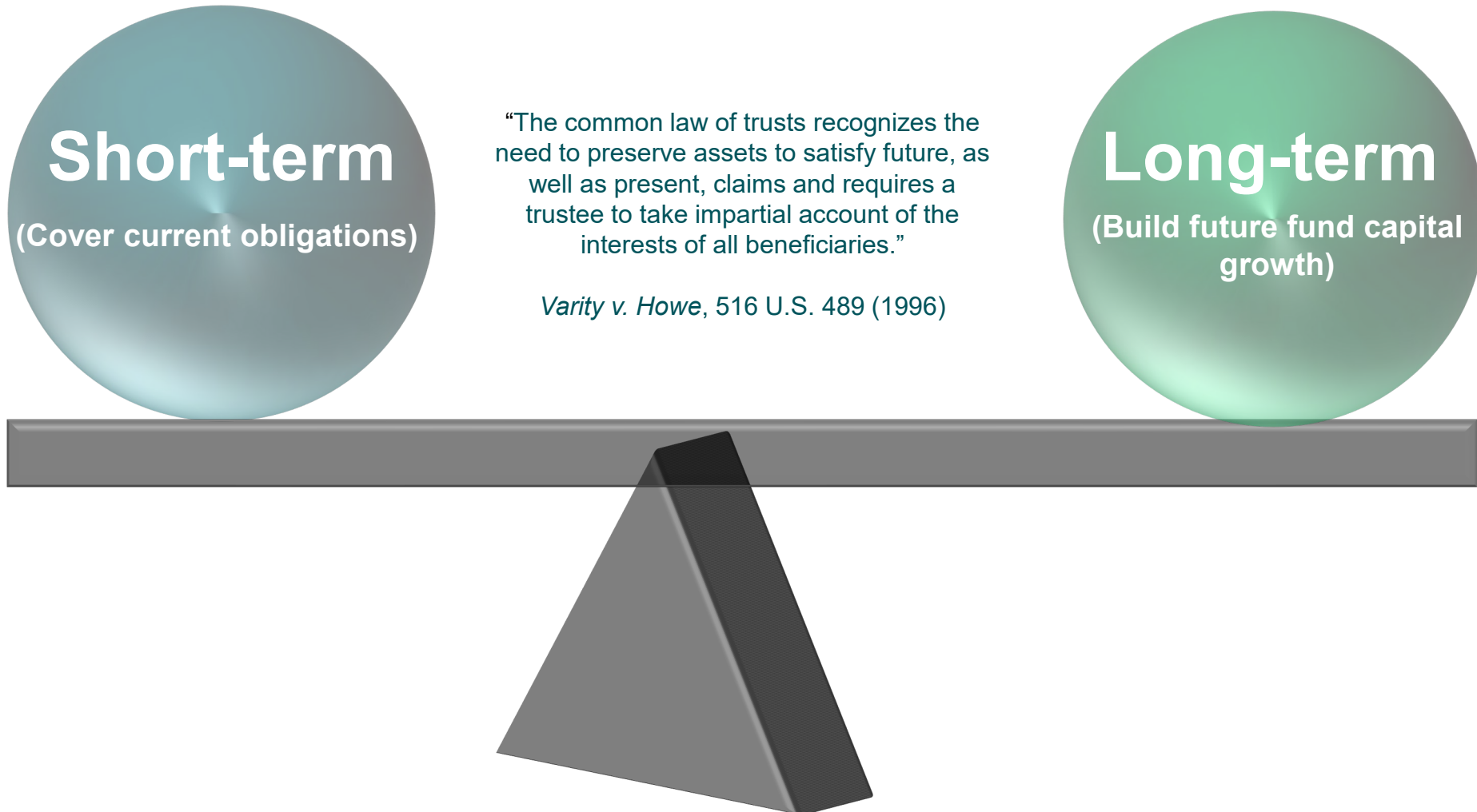
How Boards Ensure Loyalty

- Ethics and conflicts of interest policies
- Dispute resolution and trustee discipline policies
- Education/training policy (including fiduciary duty refreshers)
- Board self-evaluations
- Organizational culture - tone at the top
- Audit and compliance functions

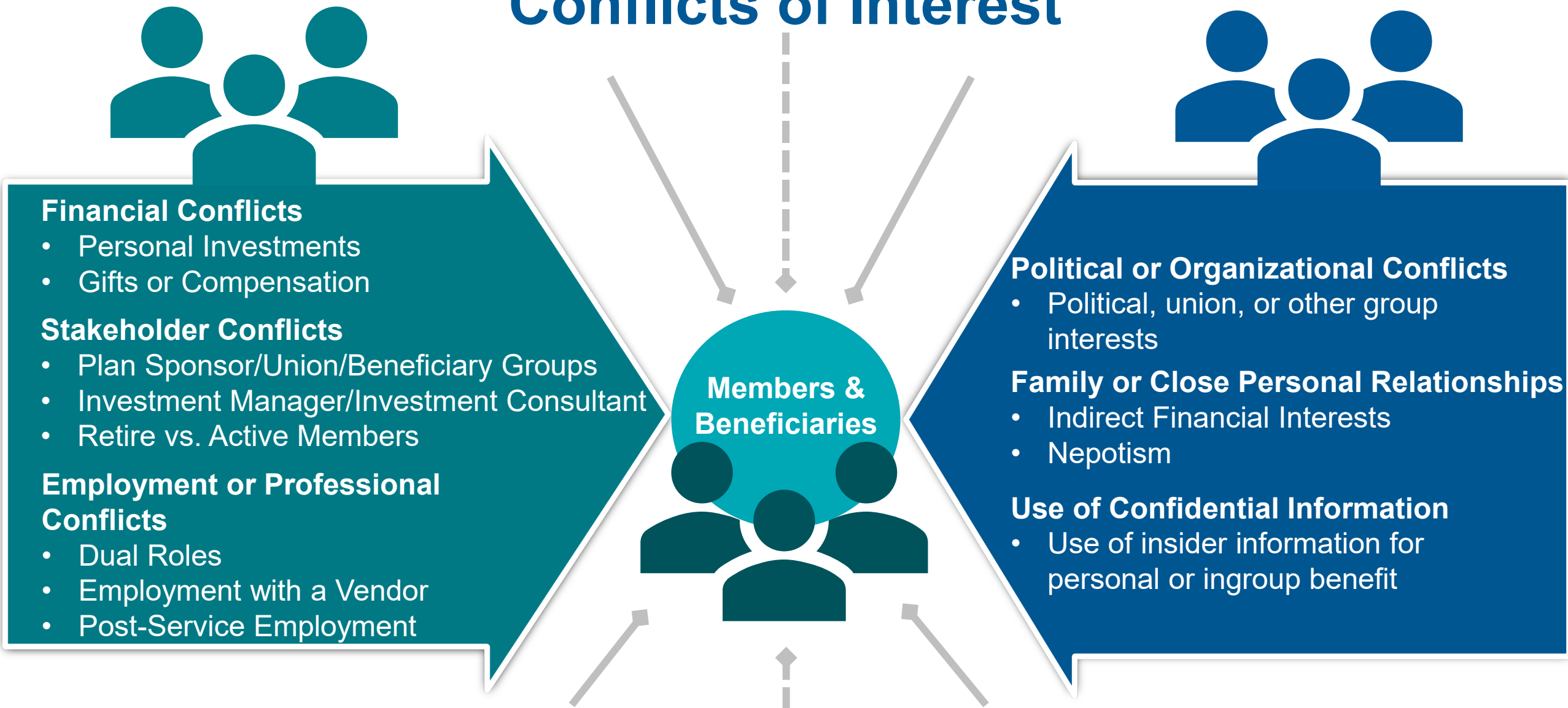
Duty of Loyalty – To Whom?



Duty of Impartiality = Balancing Act



Conflicts of Interest



Trust law requires an unwavering duty of complete loyalty to the beneficiary of the trust, to the exclusion of the interests of all other parties. Restatement (Second) of Trusts § 170(1) (1957)

“Eye Single” to the Participants & Beneficiaries



Amendments to the California Constitution, Art. XVI, Sec. 17 adopted trust law to prevent political and other outside influences from interfering with the purpose of pension funds.

The Constitution requires loyalty to the best interest of members and beneficiaries.



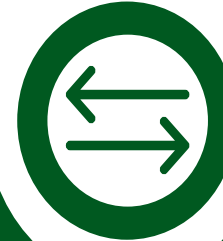
O’Neal v Stanislaus County Employees’ Retirement Association, 8 Cal.App.5th 1184, 1209, 1218 (2017)

A fiduciary has a duty not to use or deal with trust assets for the fiduciary’s profit, the benefit of a third person, including that of the plan sponsor/settlor, or for any other purpose unconnected with the trust.



NLRB v. Amax Coal Co., 453 U. S. 322(1981) (citing *Meinard v. Salmon*, 249 N.Y. 458)*

“To deter the trustee from all temptation and to prevent any possible injury to the beneficiary, the rule against a trustee dividing his loyalties must be enforced with ‘uncompromising rigidity.’”



Spence v. American Airlines Inc., et al, WL 225127 (N.D. TX, 2025)*

The failure to consider the interests of the trust apart from other conflicting interests resulted in a breach of the duty of loyalty.



Deak v. Masters, Mates and Pilots Pension Plan, 821 F.2d 572 (11th Cir. 1987)*

Finding that an action taken primarily to benefit the union is a breach of the Duty of Loyalty.

The Trustees violated their duty by using their position as fiduciaries of the Plan to further the goals of the union

*Note: ERISA cases are not binding authority for governmental plans; however, they are instructive on how a court may interpret the duty of loyalty and concepts of trust law in the context of a governmental plan.

“

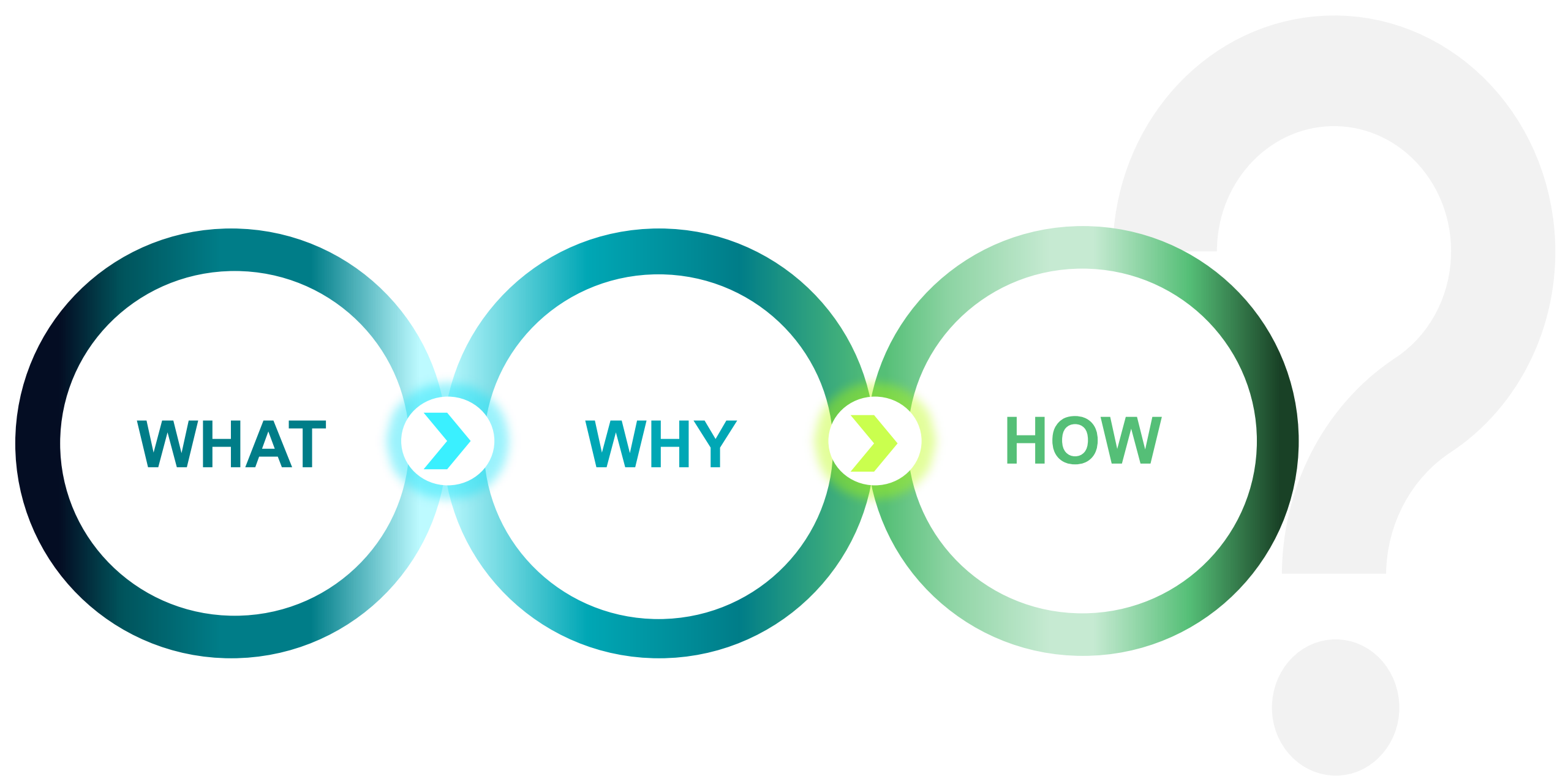
The strict duty of loyalty in the trust law ordinarily prohibits the trustee from investing or managing trust investments in a manner that will give rise to a personal conflict of interest...[Trustees are prohibited from] investing in a manner that is intended to serve interests other than those of the beneficiaries or the purposes of the settlor. Thus, for example, in managing the investments of a trust, the trustee's decisions ordinarily must not be motivated by a purpose of advancing or expressing the trustee's personal views concerning social or political issues or causes.

”

Restatement Third of Trusts § 90 (comment c) (emphasis added)

Governance, Conflicts & Ethics @ CalPERS





Fiduciary Responsibilities: Co-Trustees

Active Participation

- Both a duty and a right
- Requires active trustee participation in affairs of the trust
- Prevents a trustee from being excluded from decision-making

Reasonable Cooperation

- Maintenance of effective trustee working relationship a must
- Establishes a need for basic levels of civility and decorum among trustees

Co-Trustee Breach

- Prevents knowingly allowing a co-trustee to breach that co-trustee's fiduciary responsibility
- If breach occurs, trustee must take reasonable steps to compel co-trustee to remedy breach

Co-trustees should conduct themselves so as to “foster a spirit of mutual trust, confidence, and cooperation to the extent possible”
Ball v. Mills, 376 So.2d 1174 (Fla. App. 1979)

The Board acts as a collective body, not individual actors.

Each individual director has the obligation to act with care, loyalty, and good faith in participating in board activities and decisions.

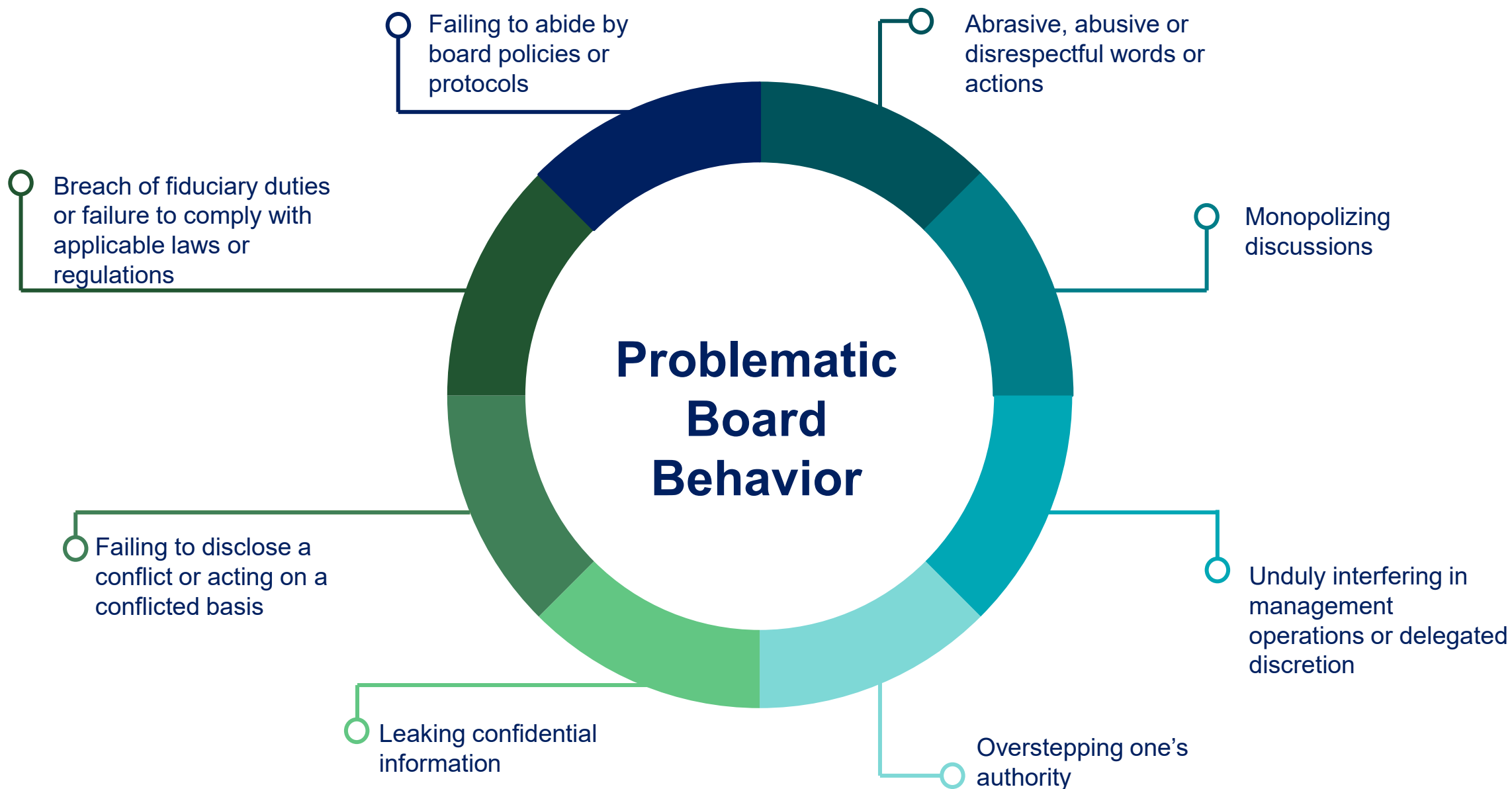
No individual director has the authority (unless delegated by the board) to authorize action, direct management or other employees, bind the organization, or speak on behalf of the board or organization.





Holly Gregory, Harvard Law School Forum, *Establishing Norms for Director Behavior*, Nov. 8, 2022





Good governance is not a panacea, but it makes organizations more *effective* and *resilient*. Consistent good governance practices insulate fiduciaries from liability.





Tiffany R. Reeves, Partner
Faegre Drinker Biddle & Reath LLP
Institutional Investor Services

(612) 766-7139 direct

tiffany.reeves@faegredrinker.com

www.faegredrinker.com

