**17.07 DUTY TO DISCLOSE**

You must decide whether the defendant had a duty to disclose information to the plaintiff. A party to a transaction has a duty to use reasonable care to disclose information to the other party before the transaction is completed if:

(1) there is a fiduciary relationship or other relation of trust and confidence between the parties; or

(2) the defendant has information that [he][she] knows is necessary to prevent the plaintiff from misunderstanding the facts as presented by the defendant; or

(3) the defendant acquires information that [he][she] knows will make the defendant's previous statement untrue or misleading; or

(4) The defendant made a false or misleading statement without expecting that the plaintiff would rely on the statement, but the defendant later learns that the plaintiff is about to rely on the statement; or

(5) the defendant knows the plaintiff is about to enter into the transaction based upon a mistake concerning a basic fact, and the plaintiff would reasonably expect the defendant to correct the mistake because of the plaintiff’s relationship to the defendant, customs of the trade, or other circumstances. A basic fact is an important fact that is assumed by the parties and that relates to a fundamental element of the transaction.

Use Note

This instruction should be given with 17.06 (Nondisclosure) and should be modified to include only those elements relevant to the facts of the case.

Comment

These elements come from Restatement (Second) of Torts, § 551(2)(a) – (e). *See* *Deptula v. Simpson*, 164 P.3d 640, 645-46 (Alaska 2007); *Arctic Tug & Barge Inc. v. Raleigh, Schwarz & Powell*, 956 P.2d 199, 202 (Alaska 1998); *Matthews v. Kincaid*, 746 P.2d 470 (Alaska 1987); *Turnbull v. LaRose*, 702 P.2d 1331, 1334 (Alaska 1985].

As to the duty of disclosure by fiduciaries, *see* *Henash v. Ipalook*, 985 P.2d 442, 446 (Alaska 1999); *Carter v. Hoblit*, 755 P.2d 1084, 1086 (Alaska 1988).

The Restatement indicates that existence of a duty is a question for the court, but the jury may need to determine disputed facts that bear on the existence of a duty. Restatement § 551, comment m. The Alaska Supreme Court has not specifically addressed this question.