

Texas Penal Code §§ 32.45 & 32.53

[Texas Penal Code § 32.45](#)

*“(a) For purposes of this section:(1) "Fiduciary" includes: (A) a trustee, guardian, administrator, executor, conservator, and receiver;(B) an attorney in fact or agent appointed under a durable power of attorney as provided by Subtitle P, Title 2, Estates Code;(C) any other person acting in a fiduciary capacity, but not a commercial bailee unless the commercial bailee is a party in a motor fuel sales agreement with a distributor or supplier, as those terms are defined by Section 162.001, Tax Code; and(D) an officer, manager, employee, or agent carrying on fiduciary functions on behalf of a fiduciary.(2) "Misapply" means deal with property contrary to: (A) an agreement under which the fiduciary holds the property; or(B) a law prescribing the custody or disposition of the property.(b) A person commits an offense if he intentionally, knowingly, or recklessly misapplies property he holds as a fiduciary or property of a financial institution in a manner that involves substantial risk of loss to the owner of the property or to a person for whose benefit the property is held.(c) An offense under this section is:(1) a Class C misdemeanor if the value of the property misapplied is less than \$100;(2) a Class B misdemeanor if the value of the property misapplied is \$100 or more but less than \$750;(3) a Class A misdemeanor if the value of the property misapplied is \$750 or more but less than \$2,500;(4) a state jail felony if the value of the property misapplied is \$2,500 or more but less than \$30,000;(5) a felony of the third degree if the value of the property misapplied is \$30,000 or more but less than \$150,000;(6) a felony of the second degree if the value of the property misapplied is \$150,000 or more but less than \$300,000; or(7) a felony of the first degree if the value of the property misapplied is \$300,000 or more.(d) An offense described for purposes of punishment by Subsections (c)(1)-(6) is increased to the next higher category of offense if it is shown on the trial of the offense that the offense was committed against an elderly individual as defined by Section 22.04.(e) With the consent of the appropriate local county or district attorney, the attorney general has*

*concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section that involves the state Medicaid program.”*

## Exploitation of Child, Elderly Individual, or Disabled Individual

### [Texas Penal Code 32.53](#)

Misapplication of fiduciary property can occur by act or omission. Anita and Amy Brunsting are felons by both act and omission under [Texas Penal Code §32.45](#). Misapplication of Fiduciary Property in Excess Of \$300,000 is a 1<sup>st</sup> degree felony. Misapplication of fiduciary property held in trust for a child, elderly or disabled individual acts as an enhancement, boosting the offense level by one degree under [Texas Penal Code §32.45](#). However, when the amount is in excess of \$300,00.00 Misapplication of fiduciary property held in trust for a child, elderly or disabled individual is treated as a separate felony in addition to [Texas Penal Code §32.45](#).

There are no accessories after the fact. Everyone that participated in the misapplication of fiduciary property is equally culpable of felony in the 1<sup>st</sup> degree and equally liable (individually and severally) for the damages that resulted from their associated criminal acts.

### [Tex. Pen. Code § 7.01 - Parties to Offenses](#)

**(a)** A person is criminally responsible as a party to an offense if the offense is committed by his own conduct, by the conduct of another for which he is criminally responsible, or by both.**(b)** Each party to an offense may be charged with commission of the offense.**(c)** All traditional distinctions between accomplices and principals are abolished by this section, and each party to an offense may be charged and convicted without alleging that he acted as a principal or accomplice.

### [Tex. Pen. Code § 7.02](#)

“(a) A person is criminally responsible for an offense committed by the conduct of another if: **(1)** acting with the kind of culpability required for the offense, he causes or aids an innocent or nonresponsible person to engage in conduct prohibited by the definition of the offense;**(2)** acting with intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense; or**(3)** having a legal duty to prevent commission of the offense and acting with intent to promote or assist its commission, he fails to make a reasonable effort to prevent commission of the offense.**(b)** If, in the attempt to carry out a conspiracy to commit one felony, another felony is committed by one of the

conspirators, all conspirators are guilty of the felony actually committed, though having no intent to commit it, if the offense was committed in furtherance of the unlawful purpose and was one that should have been anticipated as a result of the carrying out of the conspiracy.”