THE ADVISOR LAB

SECURUS™ WEALTH MANAGEMENT

Caring People Raising Trust

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The (7) Seven Simple Truths Every Plan Sponsor Should Know

Fiduciary Prudence for Plan Sponsors

Plan Sponsors are Unaware of the Many Duties Required of Them as a Fiduciary

Considerations

- Retirement Plan Industry: Is Committed to a Transactional Sales Model.
- Retirement Plan Industry (when selling their wares): Use Fiduciary Buzz Words and Misrepresent the Seriousness of Fiduciary Responsibility for Plan Sponsors.
- Retirement Plan Industry: Wants to Sell a Product.
- Retirement Plan Industry: Is Weighed Down in Complexity and Cost.

It Does Not Have to be so Complicated

- By Focusing on the Right Things, A Plan Sponsor Does Not Have to Know EVERYTHING.
- Delegation is KEY.
- There is Power in Simplicity.
- Know the (7) Things.

The (7) Simple Plan Sponsor Truths:

1. Yes, It's True. You are a FIDUCIARY
2. You CAN Delegate Your Fiduciary Responsibility
3. Ask The RIGHT Questions of Your Current Provider
4. Understand Your Fees. ALL Fees
5. Why You Need an Investment Policy Statement
6. The Investment Committee
7. The Plan Sponsor Checklist

1. Yes, It's True, You Are a Fiduciary

- ERISA Defines Fiduciary as:
  - Any person (with respect to a TRUST) exercises any discretionary authority or discretionary control regarding management of the plan, or exercises any authority or control regarding management or disposition of its assets; or
  - Renders investment advice regarding plan assets for a fee or other compensation, direct or indirect, or has any authority or responsibility to do so; or
  - Has any discretionary authority or discretionary responsibility in the administration of such plan.

1. Yes, It's True, You Are a Fiduciary

Factors That May Determine Fiduciary Status

Factors	Facts Favoring Fiduciary Status	Facts Contrary to Fiduciary Status
Range of recommendations	Specific recommendations as to securities and money managers.	General advice or choice of reasonable investment and/or manager options.
Scope of Services	Retainer arrangement for regular advice on variety of substantive issues over extended period of time: individualized advice based on client's circumstances; agreements that services serve as primary basis for decisions.	Project related work; general work that client must adapts to its specific situation; agreements that services do not serve as primary basis for investment decisions.
Experience and investment sophistication of board	Unsophisticated; little investment experience; always follows recommendations of advisors.	Experienced and sophisticated; expresses own opinions; modifies options; seeks other opinions; engages other regular advisors.

The Management of Investment Decisions, Donald Trone, 1996

1. Yes, It's True, You Are a Fiduciary

- What are Your Fiduciary Duties?
  - Act solely in the interest of Plan Participants and their beneficiaries and with the exclusive purpose of providing benefits to them;
  - Carrying out your duties prudently;
  - Following the Plan Documents (unless inconsistent with ERISA);
  - Diversifying Plan Assets;
  - Paying ONLY reasonable expenses.

The duty to act prudently is one of the central responsibilities under ERISA

2. You Can Delegate Your Fiduciary Responsibility

- ERISA's original intent was for retirement plans to be managed and run by experts (just like a defined benefit plan).
- Delegating responsibility to outside experts, insulates a plan sponsor from both responsibility and liability.
- REPEAT: If 'discretion' is is delegated by a plan sponsor—No Responsibility for Actions (Investment Decisions) of Outside Expert.
- By delegating, the plan sponsors **minimize** their risk related to the plan AND **maximize** the wealth for their participants.
- Delegation provides REAL VALUE for the plan sponsor.

2. You Can Delegate Your Fiduciary Responsibility

- Forget the Warranty…Hire an outside Fiduciary.
  - Charters vs. John Hancock
- 404(c) is not ENOUGH.
- Discretion is the primary trigger of fiduciary responsibility & liability.
- No discretion=no responsibility=no liability
- Named fiduciary can CONTROL – MANAGE the operation and administration of the plan.
- REMINDER: Co-Fiduciary has no legal meaning in ERISA.

3. Ask the Right Questions

- Ask the right questions of your service providers:
  - Insurance Companies
  - Mutual Fund Companies
  - Brokers – Investment Professionals
  - Banks
  - Third Party Administrators

- You have a DUTY to KNOW.

3. Ask the Right Questions

- Insurance Companies
  - Are the investment offerings mutual funds or separate accounts?
  - Can participants transfer monies out of the fixed accounts without penalty?
  - Are there MVA's or M&E charges?
  - Are the investment offerings proprietary?

- Mutual Funds
  - What are the TOTAL fund expenses?
  - Can we get outside funds?

3. Ask the Right Questions

- Brokers
  - How do <u>you</u> get paid?
  - How were the investments selected that you are offering?
  - Do you earn dealer concessions on the fund purchases?
  - Do you earn a different rate fee of fee depending upon the investment selected?
  - Do you offer investment advice?
  - Are investments proprietary?
- Banks
  - Is the bank acting as a trustee, if not, why not?
  - Are you an investment fiduciary?
  - Are the investments proprietary?

3. Ask the Right Questions

- Third Party Administrators
  - Do you receive asset based compensation from the investment provider?
  - Do you make QDRO determinations?
  - Do you make hardship determinations?
  - Will you act as named fiduciary?

4. Understand Your Fees. ALL FEES

- Explicit Fees – Implicit Fees
- Administrative Cost
- Recordkeeping Fees
- Custody Fees
- Trustee Fees
- Brokerage Fees
- Investment Cost
  - Investment Management Fees
  - Expense Ratio
  - Bid - Ask Spread Cost
  - Short term Trading Fees

5. Why You Need an Investment Policy Statement

- The Most Important Duty of the Fiduciary is Procedural Prudence (Investment Policy Statement).
- ERISA 402(b)(1) – “Every employee benefit plan shall provide a procedure for establishing and carrying out a funding policy…”
- Uniform Prudent Investor Act – “The trustee must give reasonably careful considerations to both the formulation and the implementation of an appropriate investment strategy, with investments to be selected and reviewed in a manner reasonably appropriate to the strategy.”
- IPS Structure:
  - Purpose & Background
  - Statement of Objectives
  - Guidelines & Investment Policy
  - Securities Guidelines
  - Selection of Money Managers
  - Control Procedures

6. The Investment Committee

- The purpose of the Committee is to establish, execute and interpret the investment policy statement (IPS) for the plan.
- The selection of the investment managers, custodians, and advisors to the plan (delegate).
- Monitor.
- Formalize the process. Establish these procedures in writing.
- Document.

7. The Plan Sponsor Checklist

x	Plan & Trust Documents		Investment Management Agreements
	Summary Plan Description		Third Party Service Providers
	Adoption Agreement		Investment Management Agreements
	Summary Annual Reports		Due Diligence Documentation
	Trustee Reports		Investment Manager Reports
	Resolutions		Plan Sponsors Periodic Review
	Form 5500		Request for Proposals
	Journal , Ledgers, Account Statements		Competitive Bid Documentation
	Copy of Fidelity Bond Policy		Copies All Service Agreements
	401(k) Plan Promotional Materials		Investment Committee Meeting Minutes
	Investment Options		Investment Committee Charter
	Participant Communications		Investment Committee Member Acceptance Letters
	Prospectus		Administrative Committee Meeting Minutes
	Account Statements		Enrollment Forms & Procedures
	Safe Harbor Notices		Loan & Hardship Withdrawal
	Qualified Default Investment Alternative Notices		QDRO & Claim Procedures
	Executed IPS		Audited Financial Statements

Next Steps

- Do a Fiduciary Analysis & Review.
- Read the Uniform Prudent Investor Act.
- Delegate.

Q & A