

UNDERSTANDING FIDUCIARY ROLES AND RESPONSIBILITIES



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WHAT YOU WILL LEARN

- The definition of fiduciary
- The importance of being a fiduciary
- Limiting fiduciary liability
- Investment committee functions
- Documentation practices



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DEFINING THE FIDUCIARY

From Merriam-Webster's Online Dictionary:

fi-du-ci-ar-y *adj.*

- a. Of or relating to a holding of something in trust for another: *a fiduciary heir; a fiduciary contract.*
- b. Of or being a trustee or trusteeship.
- c. Held in trust.

One, such as an agent of a principal or a company director, that stands in a special relation of trust, confidence, or responsibility in certain obligations to others.

"A fiduciary is defined as someone acting in a position of trust on behalf of, or for the benefit of, a third party. Fiduciary status can be difficult to determine, and is based on facts and circumstances. In general, the issue is whether a person has effective control or influence over substantial investment decisions. It is not uncommon for fiduciaries to be unaware of their status."

From *Prudent Practices for Investment Stewards* by FI360

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WHO IS A FIDUCIARY?

Fiduciary status is based on the functions performed for the plan, not just a person's title.

ERISA states a person is a fiduciary with respect to a plan to the extent he:

- has discretionary authority or control over plan or plan investments
- renders investment advice for a fee or other compensation
- has discretionary authority in the administration of the plan

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TYPES OF FIDUCIARIES

- “Named Fiduciary” – identified either by office or name in the plan or trust documents
- Trustee
- Plan Administrator
- Based on function or role:
 - Corporate officer or director (or board of directors) who appoints members of an investment committee
 - Investment or administrative committee members
 - Professional providing continuous and comprehensive investment advice for a fee
 - Having the discretion to buy or sell plan investments

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THE IMPORTANCE OF BEING A FIDUCIARY

- **Prudence**
- **Loyalty**
- **Exclusive purpose**
- **Diversification**
- **Adherence**

...they act on behalf of participants in a retirement plan and their beneficiaries.

discharge duties with care, diligence, and sound judgment

Prudence

act solely in the best interest of the participant at all times

Loyalty

act for the exclusive purpose of providing benefits to participants

Exclusive Purpose

take steps to diversify plan assets and minimize the risk of large investment losses

Diversification

carry out duties in accordance with the governing retirement plan documents & all applicable laws

Adherence

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FIDUCIARY LIABILITY

- Fiduciaries may be held personally liable
- Important to specify fiduciary responsibilities clearly in service agreements
- Fiduciaries have potential liability for the actions of their co-fiduciaries
- ERISA bond covers fiduciaries that handle plan assets
- Fiduciary insurance is an option for functional fiduciaries

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LIMITING FIDUCIARY LIABILITY

- Documenting the processes used to carry out their fiduciary responsibilities
- Giving participants control over the investments in their accounts in defined contribution plans
- Hiring service providers to handle fiduciary functions

**ERISA
SECTION
404(c)**

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FIDUCIARY FUNCTIONS THAT CANNOT BE DELEGATED

- Selecting and monitoring service providers
- Controlling and accounting for investment expenses
- Determining investment goals and objectives and what asset classes will be represented by the investment options
- Approving appropriate money managers, mutual funds, or other “prudent experts” to implement the investment policy
- Establishing an explicit, written investment policy consistent with the goals and objectives
- Monitoring the activities of the overall investment program for compliance with the investment policy
- Avoiding conflicts of interest and prohibited transactions

Fiduciaries who are not qualified to fulfill their duties are legally required to seek assistance from competent sources.

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ACKNOWLEDGING FIDUCIARY STATUS IN WRITING

All those acting in a fiduciary capacity to the plan should acknowledge their status in writing.

- Identifies fiduciary roles and responsibilities
- Reviews prohibited practices and what would be considered a breach of fiduciary responsibility
- Identifies ERISA guidance for plan fiduciaries – the importance of being a fiduciary

Under the prudent man rule, fiduciaries must use "the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims."

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INVESTMENT COMMITTEE BASICS

- Size of the committee (4-6 is optimal)
- Generally meet quarterly
- Consider appointing a Chairman and Secretary
- Responsibilities of the committee documented (by-laws)
- Fiduciary acknowledgement and appointment to the committee in writing
- Each member should be educated on ERISA roles on the fundamentals of ERISA
- Minutes documented including any decisions voted on and decision-making process evaluated
- Agenda followed for each meeting to provide consistent process for reviewing key items

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WHAT SHOULD BE ON THE AGENDA?

- Review of plan investment options in conjunction with the Investment Policy Statement
- Review of all plan expenses
- Review of factors that might warrant a change to the plan documents
- Participant Reports including
 - Asset allocation
 - Contribution and Participation Rates
 - Overall effectiveness of participant communications program
- Review of services being provided
- Review of prior meeting minutes

Documenting Meeting Minutes:

- Date / time
- Attendees
- Items discussed
- Reports reviewed
- Decisions reached
- Action necessary

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DOCUMENTATION PRACTICES

Fiduciary Risk Management Kit

INVESTMENT COMMITTEE DOCUMENTS

- Investment committee appointment and fiduciary acknowledgement letters
- Trustee appointment and acknowledgement letter
- Committee meeting minutes
- By-laws
- Committee responsibility checklist

PLAN INVESTMENT SELECTION AND MONITORING

- ERISA compliance checklist
- Formal Investment Policy Statement
- IPS Review Checklist
- Quarterly investment monitoring report executive summary and call to action
- Periodic investment review checklist

SERVICE PROVIDER DUE DILIGENCE

- Provider review checklist
- Plan service and expense benchmarking report or analysis
- Provider due diligence comparison report

TAB ONE

TAB TWO

TAB THREE

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DOCUMENTATION PRACTICES

Fiduciary Risk Management Kit

PARTICIPANT COMMUNICATIONS

- ERISA Section 404(c) checklist
- Participant Education Program calendar
- Participant Education Program checklist
- Sample enrollment

PLAN DOCUMENTS & ADMINISTRATION

- SPD Review checklist
- Annual plan admin calendar
- PPA checklist
- Plan Document
- Adoption Agreement
- SPD
- SMM
- Service Agreements with all providers
- Advisor consulting agreement
- Discrimination testing
- 5500 annual report
- ERISA bond documentation



TAB FOUR

TAB FIVE

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IN SUMMARY

Am I a Fiduciary?

- Fiduciary role based on fact and circumstance
- Fiduciaries must demonstrate PRUDENCE
- There are ways to limit fiduciary liability
- Document the decision-making process



Understand fiduciary roles and

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KEY RESOURCES

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www.401kservicesolution.com

- Fiduciary Risk Management Kit
 - 3-Ring Binder
 - Table of contents
 - Header pages, document listing with explanations
 - Sample IPS
 - Appointment to Investment Committee letter
 - Education Guides on each critical issue



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