

THE ROLES AND RESPONSIBILITIES OF ALL INVOLVED PARTIES (FIDUCIARIES AND NON-FIDUCIARIES) ARE DEFINED, DOCUMENTED, AND ACKNOWLEDGED.

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.

There are numerous parties involved in the investment process, and each should have their specific duties and requirements detailed in the Investment Policy Statement, or otherwise documented in writing. This ensures continuity of the investment strategy when there is turnover, helps to prevent misunderstandings between parties, and helps to prevent omission of critical functions.

Each party involved in the investment process should acknowledge their defined duties and understand their role in the process. Those designated as fiduciaries need to acknowledge their level and understanding of fiduciary responsibility.

Stewards are responsible for the general management of the investments—in essence, the management of the twenty-two *Practices* presented in this handbook. If statutes and trust provisions permit, the Steward may delegate certain decisions to professional money managers, trustees (co-fiduciaries), and/or investment advisors and consultants. But even when decisions have been delegated to a professional, a Steward can never fully abdicate these primary responsibilities:

- Determining investment goals and objectives
- Approving an appropriate asset allocation strategy
- Establishing an explicit, written investment policy consistent with identified goals and objectives
- Approving appropriate money managers, mutual funds, or other “prudent experts” to implement the investment policy
- Monitoring the activities of the overall investment program for compliance with the investment policy
- Avoiding conflicts of interest and prohibited transactions

As mentioned previously in the Comments Section on the UPIA, the provisions of the UPIA are “default” provisions; i.e. the intentions and guidelines provided by the trust maker in the trust document delegates investment responsibility to, or otherwise appoints, an Investment Advisor other than the trustee to the trust, and the document clearly directs the trustee to allow such delegation, and absolves the trustee of such responsibility, then the trust document prevails.

CRITERIA

- 1.2.1 The roles and responsibilities of all parties are documented in the IPS.
- 1.2.2 All parties demonstrate an awareness of their duties and responsibilities.
- 1.2.3 All parties have acknowledged their status in writing.
- 1.2.4 Investment committees have and follow a defined set of by-laws.

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Substantiation

Employee Retirement Income Security Act of 1974 [ERISA]

§3(38)(c); §402(a)(1); §402(b)(2) and (3); §403(a)(2); §404(a)(1)(B); §405(c)(1)

Case Law

Marshall v. Glass/Metal Association and Glaziers and Glassworkers Pension Plan, 507 F. Supp. 378 2 E.B.C. 1006 (D.Hawaii 1980); *Katsaros v. Cody*, 744 F.2d 270, 5 E.B.C. 1777 (2d Cir. 1984), *cert. denied*, *Cody v. Donovan*, 469 U.S. 1072, 105 S. Ct. 565, 83 L.Ed. 2d 506 (1984); *Marshall v. Snyder*, 1 E.B.C. 1878 (E.D.N.Y. 1979); *Donovan v. Mazzola*, 716 F.2d 1226, 4 E.B.C. 1865 (9th Cir. 1983), *cert. denied*, 464 U.S. 1040, 104 S. Ct. 704, L.Ed.2d 169 (1984); *Fink v. National Savings and Trust Company*, 772 F. 2d 951, 6 E.B.C. 2269 (D.C. Cir. 1985)

Other

Joint Committee on Taxation, *Overview of the Enforcement and Administration of the Employee Retirement and Income Security Act of 1974* (JCX-16-90, June 6, 1990)

Uniform Prudent Investor Act [UPIA]

§1(a); §2(a); §2(d); §9(a)(1) and (2)

Other

Restatement of Trusts 3d: Prudent Investor Rule §171 (1992)

Uniform Prudent Management of Institutional Funds Act [UPMIFA]

§3(b); §3(c)

Management of Public Employee Retirement Systems Act [MPERS]

§6(a) and (b); §7; §8(b)

Other

National Labor Relations Board v. Amax Coal Co., 453 U.S. 322, 101 S. Ct. 2789, 69 L.Ed. 2d 672 (1981)