Fiduciary Duty #1

Since the Dept. of Labor has recently made the subject surrounding the word "Fiduciary" a matter of headlines news, I wanted to take this opportunity to offer a suggestion concerning this topic.

As you have heard us discuss with each of the meetings that take place in the oversight of your 401k plan, you serve as a Responsible Plan Fiduciary, otherwise known as the RPF.

Due to the fact that the duties surrounding those who serve as the RPF are voluminous in nature, it can be an overwhelming process to get one's hands wrapped around all that these duties entail.

In order to make the process more manageable, we would like to offer the idea of providing a regular report that briefly summarizes one duty at a time, via an email.

If this sounds both reasonable and beneficial, let us begin my describing one of the four Foundational Principles that confront an RPF, and that is

THE DUTY OF LOYALTY

As found in the world of Wikipedia, the **Duty of Loyalty** is often called the cardinal principal of fiduciary relationships, but is particularly strict in the law of trusts.[1] In that context, the term refers to a Trustee's duty to administer the Trust solely in the interest of the beneficiaries, and following the Terms of the Trust. It generally prohibits a Trustee from engaging in transactions that might involve self-dealing or even an appearance of conflict of interest. Furthermore, it requires a fiduciary to deal with transparency regarding material facts known to them in interactions with beneficiaries.[2]
Duty of Loyalty in corporation law to describe a fiduciaries' "conflicts of interest and requires fiduciaries to put the corporation's interests ahead of their own."[3] "Corporate fiduciaries breach their duty of loyalty when they divert corporate assets, opportunities, or information for personal gain."[3]It is generally acceptable if a director makes a decision for the corporation that profits both him and the corporation. The duty of loyalty is breached when the director puts his or her interest in front of that of the corporation.

The bottom line on this rule could be summarized as follows: everything that you do in your oversight of your corporate retirement plan must be done from the perspective of "what is in the best interest of the participating employees".

In the spirit of brevity, let's assume that this is enough to make the point on this topic.

If agreeable, we'll be back in the near future for the next in the series.

Don't hesitate to let us know if you have any questions or would like to discuss this further.

Mike & Matt