

PENSION FUNDaamentals®

Trustee Development Seminar – Session One

Fiduciary Responsibility – Your Role as a Trustee

MAPERS

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Who is a Fiduciary?

The term “fiduciary is derived from early Roman law and means “ a person having the character of a trustee; one who has a duty to act for another's benefit.”

What Laws Establish Fiduciary Responsibilities?

Public Act 314 of 1965

Definition of “Investment Fiduciary”:

“one who exercises any discretionary authority or control in the investment of a system’s assets and/or renders investment advice for a system for a fee or other direct or indirect compensation.”

According to Act 314 a Trustee shall:

- Discharge duties solely in the interest of the plan participants and beneficiaries.
- Act with the same care, skill, prudence, and diligence under the circumstances then prevailing that a **prudent person** acting in a similar capacity and familiar with those matters would use in the conduct of a similar enterprise with similar aims.
- Act with due regard for the management, reputation, and stability of the issuer and the character of the particular investments being considered.

According to Act 314 a Trustee shall:

- Make investments for the exclusive purposes of providing benefits and of defraying reasonable expenses.
- Give appropriate consideration to:
 - The diversification of the investments;
 - The liquidity and current return of the investments relative to cash flow needs;
 - The projected return of the investments relative to the funding objectives.

According to Act 314 a Trustee shall:

- Give appropriate consideration to investments that would enhance the general welfare of the state and its citizens if such investments offer the safety and return of other comparable investments permitted under the Act;
- Prepare and maintain written investment objectives, policies, and strategies;
- Monitor the investments with regard to the limitations of the Act and to reallocate prudently if such investments exceed the limitations allowable under the Act.

Fiduciary Standards

**“It is not sufficient
that a trustee has a
pure heart and an
empty head.”**

Fiduciary Awareness

- 1. Duty of Loyalty;**
- 2. Care, Skill, and Diligence;**
- 3. Prudence;**
- 4. Diversity;**
- 5. Act in accordance with Plan Documents (Statute, Charter, Ordinance);**
- 6. Avoid prohibited transactions.**

Prohibited Transactions

“Party in Interest”

A “party in interest” is defined in Section 12d(4) of Act 314 as any of the following:

- a) An investment fiduciary, counsel, or employee of the system;
- b) A person providing services to the system;
- c) The political subdivision sponsoring the system;
- d) An organization, any of whose members are covered by the system;
- e) A spouse, ancestor, lineal descendant, or spouse of a lineal descendant of an individual described in (a) or (b);
- f) An entity controlled by an individual or organization described in (a) to (e).

Prohibited Transactions

Act 314, §§ (5) and (6)

“[A] trustee shall not engage in a transaction if he or she knows or should know that the transaction is either directly or indirectly;

- A sale, exchange or lease of property from the system to a party in interest for less than the fair market value, or from a party in interest to the system for more than the fair market value.
- A lending of money or extension of credit from the system to a party in interest without the receipt of adequate security and a reasonable rate of interest, or from a party in interest to the system with the provision of excessive security or at an unreasonably high rate of interest.

Prohibited Transactions

Act 314, §§ (5) and (6)

“[A] trustee shall not engage in a transaction if he or she knows or should know that the transaction is either directly or indirectly:

- A transfer to, or use by or for the benefit of, the political subdivision sponsoring the system of any assets of the system for less than adequate consideration.
- The furnishing of goods, services, or facilities from the system to a party in interest for less than adequate consideration, or from a party in interest to the system for more than adequate consideration.

Prohibited Transactions

§13(6) of Act 314 further provides that a trustee shall not do any of the following:

- Deal with the assets of the system in his or her own interest or for his or her own account.
- Act in any capacity in a transaction involving the system on behalf of a party whose interests are adverse to the interests of the system or the interest of its participants or participants' beneficiaries.
- Receive any consideration for his or her own personal account from any party dealing with the system in connection with a transaction involving the assets of the system.

Prohibited Transactions

Notwithstanding the foregoing, a trustee is **not** prohibited from doing any of the following:

- Receiving any benefit to which he or she may be entitled as a participant or participant's beneficiary of the system.
- Receiving any reimbursement of expenses properly and actually incurred in the performance of his or her duties for the system.
- Serving as an investment fiduciary in addition to being an officer, employee, agent, or other representative of the political subdivision sponsoring the system.
- Receiving agreed upon compensation for services from the system.

Conflicts of Interest

- Always act in the best interest of the plan participants and beneficiaries.
- Ensure that decisions are fair and that such fairness is well documented.
- Retain independent advisors. Consider them the experts.
- Avoid self-dealing at all costs.

Fiduciary Liability

Fiduciaries who breach their responsibilities shall be . . .

“personally liable”

. . . for any losses to the plans which they administer
and shall be subject to other equitable or remedial
relief, including removal from their positions.

Delegation of Responsibility

- Fiduciaries generally not liable for breach of duty if such duty has been specifically allocated to another fiduciary.
- Plan document must specifically authorize the allocation or delegation.
- Fiduciaries must exercise reasonable prudence in delegating.
- Fiduciaries must be qualified, competent, and capable.

Delegation of Responsibility

- Act 314 specifically empowers trustees with the authority to retain investment and all other services necessary for the proper administration of the system and to pay reasonable compensation for such services.
- It is essential that the qualification status and written acknowledgement of the fiduciary is well documented in official records.
- Prudence requires fiduciaries to actively monitor the activities of all appointed fiduciaries.

Support Services

- Many administrative functions performed by service providers or employees whose level of responsibility do not make them fiduciaries.
- Selection of support personnel should be carefully considered and all service providers should have clearly defined responsibilities and written contracts.
- Trustees should adopt clearly defined administrative policies and procedures to monitor support personnel.

“Procedural Prudence”

- When reviewing actions taken by fiduciaries, courts will often look to the procedures that were followed, rather than the results that were achieved.
- Well documented procedures will demonstrate that decisions are made only after careful consideration of all appropriate information.
- Adoption and adherence to properly drafted procedures gives fiduciaries an extra measure of insurance, and peace of mind.

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- Agenda
- Minutes
- Retaining Consultants and Advisors
- Benefits Administration
- Past Practice / Setting Precedent

Trustee Handbook

- Charter / Ordinance / Statutory Provisions
- Investment of Funds of Public Employee Retirement Systems (Act 314)
- Freedom of Information Act
- Open Meetings Act
- Eligible Domestic Relations Order Act
- Michigan Constitution of 1963

Trustee Handbook

- Fiduciary Responsibility Articles
- Membership Forms
- Service Retirement Procedures
- Disability Retirement Procedures
- Services of the Actuary
- Request for Estimates from the Actuary
- IRS 402(f) Notice

Trustee Handbook

- Statement of Investment Policies, Objectives and Guidelines
- Authorized Signatories Resolution
- Retirement Calculation Form
- Retirement Estimate Form
- Applicable Collective Bargaining Provisions
- Freedom of Information Act Policy

Trustee Handbook

- IRS Plan Determination Letters
- All Legal Opinions
- Resolution Index
- Actuarial Policy
- EDRO Policy
- Contracts: Investment Manager, Investment Consultant, Custodian, Legal Services
- Service Credit Policies / Procedures / Forms
- Verification of Retirement / Beneficiary Data Form

Trustee Handbook

- Retirement System Calendar
- Certification of Earnings
- Record Retention Policy
- Election Procedures
- Ethics Policy
- Employee Benefit Handbook
- Travel Policy
- Final Average Compensation Policy

Member Handbook

Table of Contents

- I. Benefit Questions and Answers
- II. Board Policies and Procedures
- III. Retirement System Provisions (Statute, Charter, Ordinance)
- IV. Relevant Collective Bargaining Provisions
- V. Summary Annual Report to Members
- VI. Annual Member Statement
- VII. Union Contracts
- VIII. Personal Financial Information



Questions / Comments

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