

THE LAW FIRM REVIEW

A Publication for Plan Sponsors and Retirement Plan Professionals

Future Trends In 401(k) That A Plan Sponsor Should Be Aware Of.

Who to pick and why.



What was good yesterday might not be good today. There were cigarette ads in the 1930s that suggested that smoking had health benefits such as cutting down on colds. It would be about 30 years later that people would find out that it really did cause lung cancer. Asbestos was a miracle mineral for its fireproofing until it was discovered that it causes cancer when fibers are inhaled. Margarine was touted as being better than butter until it was discovered how much trans fats

they may have. So what might be good yesterday might not be good today and what might be good today might not be good tomorrow. This article talks about trends in the retirement plan business that may make today's good practices not so good in the near future.

For the article, click [here](#).

A Plan Sponsor's Guide To Picking Retirement Plan Providers.

Who to pick and why.

Since I was about nine and saw it on HBO, one of my favorite movies has been Caddyshack. I loved Caddyshack years before I even liked golf and years before I was mature enough to get all the jokes. One of my favorite scenes is when Judge Elihu Smalls corners Ty Webb and asks Ty what was his score was for the last round he played. Ty said he didn't keep score and Judge Smalls wondered how Ty would be able to measure himself against other golfers. Ty quickly retorted he could against them measure by



height. When it comes to evaluating plan providers to consider hiring, it's hard to develop a metric that would gauge whether a provider should be hired or not. You can't measure by height. So this article is to evaluate how to select plan providers from every Tom, Dick, Harry, and Jane that wants you to select them to be your plan provider.

To read the article, please click [here](#).

When You Should Fire Your Retirement Plan Providers.

When it's time to say goodbye.



I am a huge Mets fan and a big fan of the 1986 Champion New York Mets. One of the biggest mistakes the Mets ever made was firing their manager Davey Johnson after several disappointing finishes in 1987, 1988, and 1989. Before he was fired, a caller asked Davey on sports radio whether he thought he was hired to be fired. Maybe it was a silly question, but almost all business relationships must come to an end. For a business relationship that needs to end, there needs to be signs for one party to decide that

it's time to say goodbye. So this article is about when it's time to end your relationship with your plan provider(s).

To read the article, please click [here](#).

Avoid a soap opera with updated Beneficiary forms.

You don't need the twits and turns.

Yes, I will admit it: I love soap operas.

My favorite show of all-time is Dallas and when I was a senior in high school and I was at home around 12:30 pm, I watched in succession: Young and The Restless, Bold and The Beautiful, One Life to Live, and General



Hospital. Needless to say, I didn't have the most active social life in high school.

To go through life, you have enough headaches, especially if you're in charge of your company's retirement plan. You don't want your retirement plan to turn into a soap opera and one way to avoid that headache is to make sure that your employees update or review their beneficiary forms every time you have a plan enrollment/ investment education meeting with plan participants. My story will tell you why.

Years ago, I worked for a third party administrator (TPA) and I had to review a

soap opera that was because of an enrollment form.

A law firm partner of a client we were the TPA for, named his children as his beneficiaries. His spouse had predeceased him.

He got married to the new wife and as part of the pre-nuptial agreement; she waived her benefit to the 401(k) plan in question. He died and his two children felt that they were entitled to the benefit. They were right, you think? You'd be wrong.

While a spouse has every right to waive her benefit, a pre-nup by itself is not an actual waiver according to the rules governing retirement plans. So in addition, the spouse had a pre-nup that she signed and then needed to sign a separate waiver form to waive the benefit to make that pre-nup effective. She didn't, her good fortune.

The children were horrified and their counsel asked about that one-year provision in the Internal Revenue Code that they thought was a smoking gun. Again, retirement plans can require a year of marriage for a spousal waiver, they don't need to and most plans I have come across don't have that one-year provision.

End of the soap opera story, in my case, this second wife actually waived her right to benefit and the children got the benefit because this second wife wanted to keep her end of the bargain in the pre-nup, valid waiver or not.

It can't be stressed enough that plan participants need to review their beneficiaries consistently and if the participants gets re-married, widowed, or had new children, they need to sit down and determine what they do with their retirement benefits since these are non-probate assets governed by ERISA and the Internal Revenue Code.

Don't make yourself a target .

Avoid trouble.



Sometimes if you don't want to be a target, don't make yourself to be a target.

Insperty Inc. a provider of outsourced human resource and business management services to small and mid-sized businesses has been sued by participants in a Insperty 401(k) plan. It has been alleged the company and its subsidiaries charged "excessive" record-keeping fees and made other fiduciary breaches of ERISA.

The complaint also alleges that Reliance Trust Co., the discretionary trustee for the plan, breached its fiduciary duties by allegedly making "imprudent" investment decisions.

The employees of Insperty's client companies are offered participation in the 401(k) plan. Insperty offers its services, which include payroll and benefits administration, to more than 100,000 businesses with more than two million employees.

The problem is that Insperty hired Insperty Retirement Services, a wholly owned recordkeeping subsidiary to be the service provider to the Insperty 401(k) plan. The 401(k) plan ended up being the new record keeper's first client. The problem also is that in 2013, 95% of Insperty Retirement Services' assets under administration as TPA belonged to the Insperty 401(k) Plan.

It was also alleged that the fiduciary trustee and advisor to the plan, Reliance Trust, selected and

retained its own high-cost and poorly performing investments to benefit itself at the expense of plan participants.

Now the participants, Insuperity, and Reliance Trust will have their day in court and the allegations in the complaint are allegations. However, I always believe that as an ERISA attorney, it's my duty to keep my clients from partaking in prohibited transactions and it's even my duty to avoid relationships that suggest that prohibited transactions take place.

Now perhaps no prohibited transactions took place, but do you think Insuperity hiring a subsidiary for plan administration and hiring a trustee where the trustee's proprietary investment options are available just doesn't look right.

Now what did I say about not making yourself a target?

ERISA litigators love targets, whether there were improper transactions or not.

Don't skimp on the retirement plan.

It's not a place to cut.

Yes, I will admit it: I love soap operas.

My favorite show of all-time is Dallas and when I was a senior in high school and I was at home around 12:30 pm, I watched in succession: Young and The Restless, Bold and The Beautiful, One Life to Live, and General Hospital. Needless to say, I didn't have the most active social life in high school.



To go through life, you have enough headaches, especially if you're in charge of your company's retirement plan. You don't want your retirement plan to turn into a soap opera and one way to avoid that headache is to make sure that your employees update or review their beneficiary forms every time you have a plan enrollment/ investment education meeting with plan participants. My story will tell you why.

Years ago, I worked for a third party administrator (TPA) and I had to review a soap opera that was because of an enrollment form.

A law firm partner of a client we were the TPA for, named his children as his beneficiaries. His spouse had predeceased him.

He got married to the new wife and as part of the pre-nuptial agreement; she waived her benefit to the 401(k) plan in question. He died and his two children felt that they were entitled to the benefit. They were right, you think? You'd be wrong.

While a spouse has every right to waive her benefit, a pre-nup by itself is not an actual waiver according to the rules governing retirement plans. So in addition, the spouse had a pre-nup that she signed and then needed to sign a separate


waiver form to waive the benefit to make that pre-nup effective. She didn't, her good fortune.

The children were horrified and their counsel asked about that one-year provision in the Internal Revenue Code that they thought was a smoking gun. Again, retirement plans can require a year of marriage for a spousal waiver, they don't need to and most plans I have come across don't have that one-year provision.

End of the soap opera story, in my case, this second wife actually waived her right to benefit and the children got the benefit because this second wife wanted to keep her end of the bargain in the pre-nup, valid waiver or not.

It can't be stressed enough that plan participants need to review their beneficiaries consistently and if the participants gets re-married, widowed, or had new children, they need to sit down and determine what they do with their retirement benefits since these are non-probate assets governed by ERISA and the Internal Revenue Code.

Find us on Facebook 

Follow us on  twitter

View our profile on  Linked in

The Rosenbaum Law Firm Review, February 2016 , Vol. 7 No. 2

The Rosenbaum Law Firm P.C.
ary@therosenbaumlawfirm.com
www.TheRosenbaumLawFirm.com
734 Franklin Avenue, Suite 302
Garden City, New York 11530
Phone 516-594-1557
Fax 516-368-3780

Attorney Advertising. Prior results do not guarantee similar results.
Copyright 2016, The Rosenbaum Law Firm P.C. All rights reserved.