

MOLDENHAUER & ASSOCIATES

MARCH NEWSLETTER

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The end of winter is near. As always, the WNY winter was unique. Severe lake effect, with intermittent warm weather was this year's winter prescription. Because we believe Covid is waning, we have made plans to return to a more normal mode of business operation.

This year's seminars have been well attended and we are comfortable saying that the seminar schedule will be like pre-pandemic. Consider attending an upcoming seminar and bring along a friend who might be interested in our advisory services.

I was thinking about our business and the journey it has traveled. Today, we are a successful mid-sized financial planning firm with a quality team of bright energetic younger people. The team is lead by Brett Moldenhauer, John Ring and longtime front office veteran Sharon Fiederowicz. We have a pleasant and professional office in Orchard Park. I believe the vast majority of our clients understand that our reputation is our most valuable asset. We commit to provide good service to all our clients and, for that reason, the vast majority of clients appreciate and stay with us. A few have been with us almost since the beginning in the early 1970's.

The business started way back in 1971, when I arrived in Buffalo for the first time. Fresh back from Vietnam, I was visiting my parents in Niagara Falls. I thought that my visit would be short lived but my father died just after his 46th birthday. Instead of returning to school to pursue the law degree, that Vietnam interrupted, I needed a job.

My father's company failed at his death due to a lack of liquidity. In his case, life insurance could have saved the company from liquidation. Because of this tragedy, I decided to sell life insurance. Then that expanded into financial planning.

The business grew and then we had setbacks caused more by industry changes and the realization that financial planning was more complex than people at that time appreciated. After building two firms that employed as many as 80 people, in 2000 my vision changed. This is when today's business model started at Moldenhauer & Associates.

We began with a commitment to provide regular high-quality service for clients, and that remains the glue that helps us continue to grow in both good and bad times. When I developed lung disease (probably connected to my time in the military), I thought the business might suffer. That is when Brett returned to Western New York. My enthusiasm was enhanced, and despite my illness, the business grew. In early 2013, I left WNY to prepare for a double lung transplant. Brett was ready and able to take over the business and, today, we are one of the longest operating privately owned financial firms in WNY. We've grown for 52+ years.

We are proud of our reputation. If I were a young person, as I was in 1971, Moldenhauer & Associates is the type of firm I'd want to build my career with.

While I hope to be writing these articles for years to come, I want to express my gratitude to God, our community, clients and the people that make the firm click on a day-to-day basis. The present problems the economy is dealing with will pass and with that the economy will recover.

Thank you for reading.

Richard Moldenhauer

Richard Moldenhauer

7 COMMON RETIREMENT PLAN MISTAKES

The headlines are all about investment expenses, revenue sharing, and conflicts of interest, but the practices that are likely to get plans and plan sponsors in trouble are a lot more mundane. Here are seven mistakes that are more likely to gum up the works for your average plan sponsor:

1. Not Following the Terms of the Plan Document

Plan documents routinely note that hardship distributions can be obtained only for certain very specific reasons and that participants first avail themselves of all other sources of financing before applying for hardship distributions. These conditions are often incorporated directly from requirements of the law. Similarly, loans are permissible from these programs only when they comply with certain standards regarding the amount, purpose, and repayment terms. Failure to ensure that these legal requirements are met can, of course, result in a distribution that's not authorized under the terms of the plan document. Since these types of distributions are often spent quickly by participants, and thus are not readily recoverable, it can be complicated and time-consuming to set the situation right. Oh, and don't forget that administrative procedures for these practices are known to be inconsistent with plan documents.

2. Failing to Follow Eligibility and Vesting Provisions

The plan document also spells out employees' rights to retirement benefits and the formulas for determining them based on the correct application of service and/or age requirements of the plan regarding eligibility for participation, as well as the proper application of the plan's vesting schedule.

To comply with those requirements, you need to maintain accurate service records for all employees. If these records are incorrect, the benefits provided may be incorrect—either in excess of what is permissible or less than what was due to the participant. **Please note:** Failure to properly follow the plan's provisions can cause the plan to lose its qualified status. The plan document serves as the foundation for plan operations; simply put, it's the operating manual for the plan. Sometimes, particularly if you are relying on a document that has been prepared by a third-party service provider, certain "gaps" can emerge between what the document allows and how the plan is actually administered. As a result, it's a good idea to conduct a document/process "audit" every couple of years. Don't assume that "the way we've always done things" is supported by the legal document governing your plan.

3. Not Keeping Your Plan Document Up to Date

As central to the plan's operation as the plan document should be, it needs to be updated when the tax laws affecting 401(k) plans change. The IRS generally establishes a firm deadline by which plan amendments reflecting tax law changes must be adopted. If you don't remember the last time you updated your plan, you're probably overdue.

4. Not Starting Required Minimum Distributions (RMDs) on Time

A minimum payment must be made to the participant by the required beginning date (RBD) and for each following year. Normally, the RBD for a participant who is not a 5-percent owner is April 1 following the end of the calendar year in which the latter of two events occurs: either the participant reaches age 72 or the participant retires or separates service from the company. For 5-percent owners—someone who owns more than 5 percent of the company—the RBD is April 1 following the end of the calendar year in which they attain age 72 regardless of their retirement or separation date.

Plan sponsors often discover that required minimum payments either haven't been paid on a timely basis or haven't been paid at all, especially when a 5-percent owner continues working after reaching age 72. Failure to follow the minimum payment rules as written in the plan document can lead to loss of the plan's tax-qualified status. If participants or beneficiaries don't receive their minimum distribution on time, they—not the plan—are subject to a 50-percent additional tax on the underpayment.

5. Not Depositing Participant Contributions on a Timely Basis

The legal requirements for depositing contributions to the plan are perhaps the most widely misunderstood elements of plan administration. A delay in contribution deposits is also one of the most common indicators that an employer is in financial trouble—and that the Department of Labor (DOL) is likely to investigate. The law requires that participant contributions be deposited in the plan as soon as it's reasonably possible to segregate them from the company's assets, but no later than the 15th business day of the month following the payday. If employers can reasonably make the deposits sooner, they need to do so. Many have read the worst-case situation (the 15th business day of the month following) to be the legal requirement. It is not. **Please note:** Rules about the timing of matching contributions or other employer contributions are different from those for elective deferrals.

6. Failing to Obtain Spousal Consent

A common plan mistake submitted for correction under the Voluntary Correction Program (VCP) is the distribution to a participant of a benefit in a form other than the required qualified joint and survivor annuity (e.g., a single lump sum) without securing proper consent from the spouse. This often happens when the sponsor's HR accounting system incorrectly classifies a participant as not married (or when the participant was not married at one point and subsequently married or remarried). Failure to provide proper spousal consent is an operational qualification mistake that would cause the plan to lose its tax-qualified status.

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7. Paying Expenses from the Plan That Aren't Eligible to Be Paid from Plan Assets

Assuming that the plan allows it (another plan document check), the DOL has divided plan expenses into two types:

- **Settlor expenses:** These must be borne by the employer and generally include the cost of any services provided to establish, terminate, or design the plan.
- **Administrative expenses:** If they are reasonable, administrative expenses may be paid from plan assets. These includes fees and costs associated with activities such as amending the plan to maintain compliance with tax laws, conducting nondiscrimination testing, performing participant recordkeeping services, and providing plan information to participants.

IRS Guidance Available

As for plans that fall short of any of the above, the IRS has [resources available to help](#) you identify these problems before they occur—and an outline of how to go about fixing them if they do occur. If you have any questions or would like to go over your portfolio/plans, please feel free to call my office.

Presented by Brett A. Moldenhauer

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9 TIPS TO PROTECT YOURSELF FROM IDENTITY THEFT

Like many people, you might believe that your identity could never be stolen. Then, one day, you go to the mailbox, open your monthly credit card statement, and see a host of charges made to your account in a country you've never visited. Millions of Americans fall victim to this type of identity theft every year. Given that identity theft is so prevalent, what can you do to safeguard yourself and your family? While we can't guarantee these tips will keep your personal information safe from fraudsters, we can recommend several best practices that are worth implementing.

Be aware of potential impersonators.

Don't give out personal information over the phone unless you're the one who initiates contact or you're absolutely certain about with whom you are speaking. If a caller requests personal information, hang up, look up the phone number of the business the caller claims to represent, and dial the number to verify the caller's identity. The same advice applies to any suspicious emails you receive. Verify who is sending the message by calling the organization that supposedly sent the email, and **don't click on any links or attachments that come with the message.**

Safely dispose of personal information.

Before you discard a computer, back up your data and delete all the personal information on it. Deleting is not sufficient protection, however, so it's best to also use a program meant for wiping or overwriting the entire hard drive. Also, consider removing the hard drive and having it securely destroyed. To do this, you can either break the circuit board in half, or use a certified data disposal service and ask for a certificate of destruction.

Before disposing of a mobile device, transfer the contents you want to retain and then permanently wipe the device. Instructions for a data wipe of your specific device can be found via an online search. Be sure to remove the memory and SIM card before recycling, selling, or giving the device away. You'll also want to shred documents you no longer use. Old credit cards, bank statements, and cash advance applications should all be destroyed.

Encrypt your data.

Encryption prevents unauthorized access to digital software. In addition to installing encryption software to protect your laptop in case it's lost or stolen, keep your browser secure by looking in the address bar for a lock symbol. When it appears, it means your information is being securely transmitted. In addition: Never make credit card purchases on unsecured websites whose addresses begin with the letters HTTP. **Always** look for secure sites, which begin with "HTTPS."

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Keep passwords private.

Use strong passwords—at least 12 characters long and combinations of upper- and lowercase letters, numerals, and symbols—and be sure you use a different one for each account. Don't use personal information or words found in the dictionary and consider using a password manager to autogenerate and store your passwords.

Don't overshare on social media.

The more personal information you post about yourself, your family, and your children, the easier it is for criminals to potentially guess your security questions. They may even be able to figure out where you live and when you are home. In addition to using your account settings to limit who can view your posts and photos, keep the following tips in mind: Never accept requests from people you haven't met or don't know personally; they could simply be posing as a friend. Never post your full name, address, social security number (SSN), account numbers, names of your children, and addresses on public websites.

Read privacy policies.

These policies tell you how the site or company with which you're doing business maintains the information you share, and what is collected and stored. The policies also explain how the company uses the information, who accesses stored information, and whether it is provided to third parties. If you don't see or understand a site's privacy policy, consider doing business elsewhere.

Secure your SSN.

Before sharing your SSN, ask questions about why a vendor or organization needs it, how it will be used, how it is protected, and what happens if you decline to give it out.

Check your credit.

The Fair and Accurate Credit Transactions Act requires the three major credit monitoring agencies (Equifax, Experian, and TransUnion) to offer consumers a free report once per year. This means that you can conduct a credit check every four months. We recommend performing a minimum of three credit checks each year to make sure all the information is correct, you are familiar with all open accounts, and verify all entries in the inquiries section.

There are numerous companies around that will monitor your credit, your accounts, the Internet, and social media for suspicious or criminal activity. These companies will alert you about changes to your credit—one of the first signs of identity theft. For additional fees, they will also monitor your children's SSNs.

These are only a few tips to help keep your identity safe. For a host of options, visit the [Federal Trade Commission website](#). And if you ever fall victim to identity theft—or suspect you may be a victim—check out [identitytheft.gov](#) for valuable guidance and resources for your specific situation.

We're always concerned about information security, and we strive to keep you updated on new security threats, as well as potential solutions to help protect your information. If you have any questions, please contact our office by phone or email.

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UPCOMING EVENTS:

Our upcoming seminars are at:

Ilio DiPaolo's

Tuesday, April 25, 2023 at 6 p.m.
3785 S Park Avenue
Blasdell, NY 14219

JP's Pub

Thursday, April 27, 2023 at 6 p.m.
1986 Lakeview Road
Lake View, NY 14085

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