



Video Transcript

I'm Sheldon Smith, the benefits lawyer at Bryan Cave in its Denver office.

For a few minutes let's talk about tax-qualified retirement plans and their proper governance.

There are three areas where we really want to focus on making sure that in this complex arena we're operating our plans properly for two purposes: one is to protect the participants; and the other is to attempt to limit the liability that might be attendant to the actions or inactions of our fiduciaries to make certain that we reduce their risk of liability.

The first thing that we have the pay particular attention to, of course, is the ERISA Fiduciary Obligations. ERISA requires that there be four basic fundamental duties that fiduciaries must comply with, there is: (1) a duty of loyalty, primary duty to the plan, its participants and their beneficiaries; (2) a duty of prudence to act at all times as a reasonably prudent person, all the way up to being reasonably prudent expert might require; (3) to diversify investments in order to reduce the risk of large losses to the plan, and (4) to be certain that we follow the plan documents so long as they are complicit with the law.

In making sure that our plans are governed properly, it's very important to set up structures that allow for internal controls and proper governance. This might require the creation of some form of a charter to the plan administrator, often a benefits committee. The charter sets forth duties and obligations that a board of directors, or members controlling an LLC, or the general partner of a general partnership provides to these benefits committee members. The charter identifies duties and obligations, and if there's an investment committee there will be further delegation in writing of the duties of the investment committee.

We will always make certain that in handling proper governance that we have good minutes of all the decisions that are made by the committee or committees; that we identify what they considered in reaching their final conclusions; and then of course writing out in some detail what those conclusions are. We want to memorialize the activities of what goes on with respect to administration of the plan, and we wanna pay particular attention to those things that might highlight specific problems that plans might run into today, particularly in the 401(k) universe. Such things as late participant contributions; using the wrong definition of compensation, or any other actions that might require that we self correct or go through the voluntary compliance program in order to get our plan back in compliance. All of these



things need to be well memorialized, so that we can demonstrate that we've been running our plans properly.

It's important of course to take all the reasonable steps to make certain that we're acting in a way that best protects our participants and limits the exposure of our fiduciaries. If you have any questions about this, we would welcome your inquiries, and please contact the benefits lawyers at Bryan Cave.