



TOUCHSTONES

INVESTMENT CONSULTING • FIDUCIARY AND SRI COUNSEL • VIA GEM FOUNDATION PROGRAM

Are you a Fiduciary? If so, what does that mean?

A fiduciary is defined as someone acting in a position of trust on behalf of, or for the benefit of, a third party. It is not uncommon for fiduciaries, especially Investment Stewards, to be unaware of their status.

Whether or not someone is an investment fiduciary generally depends upon whether they (1) are named as such in some document such as a trust agreement, in which case they clearly are, or (2) are deemed a fiduciary by virtue of what they are doing. Here are the three major "facts and circumstances" that would lead to being deemed a fiduciary:

- (1) Have discretion over the assets – i.e. they have decision making authority over how the assets are invested, distributed, used to pay expenses, etc. [This is the one that almost certainly would make any religious Leader, Treasurer, or member that serves on the equivalent of an investment committee a fiduciary.]
- (2) Provide comprehensive advice or discretionary management on a continuous basis [This would make the consultant and manager(s) fiduciaries if they are working with a community on an ongoing basis.]
- (3) Has the ability to name someone as a fiduciary. [A person in authority who appoints, assigns, or hires others to serve as fiduciaries is him/herself one.]

Where the circumstances are not sufficiently clear to decisively establish whether someone is a fiduciary or not based upon the above guidelines, the courts have generally used the level of trust involved to make the determination.

This newsletter, for faith and mission-based organizations, presents pertinent information relating to our work, industry best practices, and real life experiences.

If it is clear that the person is operating in a capacity that involves a relationship of implied trust to work in the best interests of those who benefit from the investment portfolio, a fiduciary role is assumed.

While we are not attorneys, we are not aware of any exclusion in the law pertaining to representatives of religious communities or their institutions from fiduciary responsibilities [including lay advisors and employees] for whom any of the facts and circumstances mentioned previously pertain.

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So, what are the added responsibilities of being a fiduciary? And what can you do, as Investment Stewards, to comply with and benefit from fiduciary requirements?

Generally, there are numerous parties involved in the investment process and each should have their specific duties and requirements detailed in writing to ensure continuity of the investment strategy, and help prevent misunderstandings and omission of critical functions.

Each party should acknowledge their defined duties and understand their role in the process and if designated as fiduciaries, acknowledge their level and understanding of fiduciary responsibility.

The laws that generally govern the acts of fiduciaries of private trusts, foundations, and endowments in the U.S. are the Uniform Prudent Investor Act (UPIA) (1994) and the Uniform Prudent Management of Institutional Funds Act (UPMIFA) (July 2006) as adopted by various states.

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Usually the Investment Steward may delegate certain decisions to professional money managers, trustees (co-fiduciaries), and consultants. But even when decisions are delegated to a professional, a Steward can never fully abdicate these primary responsibilities.

- Knowing the standards, laws, and provisions that impact the investment process of the portfolio
- Determining the investment goals and objectives
- Approving an appropriate asset allocation strategy (based on specific factors)
- Establishing and maintaining an explicit, written investment policy consistent with identified goals and objectives
- Approving appropriate money managers, funds, and other “prudent experts” to implement investment policy
- Controlling and accounting for all investment related expenses
- Monitoring the overall investment program for compliance with the investment policy and the activities of all the related service vendors
- Avoiding conflicts of interest and prohibited transactions
- Accommodating an SRI strategy as desired without abrogating the standard of care as a fiduciary

## <sup>2</sup> Periodic Reviews

As a practical matter, a comprehensive framework is needed to ensure that all applicable fiduciary practices are fully and effectively addressed on an ongoing basis. A planned approach to conduct periodic audits provides such a framework.

An audit, or assessment, of fiduciary practices requires an objective evaluation of the practices and requirements pertaining to fiduciaries. While there is no legal or regulatory requirement for regular documented fiduciary audits, it would certainly be consistent with fiduciary principles, responsible stewardship, and proactive leadership.

The benefits of applying fiduciary principles to your investment process (besides being in compliance with applicable laws) are peace of mind from knowing “best practices” are in place, a likelihood of reduced investment and procedural risks associated with the portfolio, and a likelihood of improved long-term investment results.

Ultimately, applying fiduciary best practices can enable leaders to better serve their organizations.

ViaGem, LLC is licensed to conduct Fiduciary Audits as part of the Fiduciary 360 Accredited Investment Fiduciary Analyst program from where much of this information was derived.