

401k Questions Employers Need to Know to Protect Themselves!



**Are You Personally Liable
for Your Plan's Investment
Losses?**

**Discover Your Exposure and the
Solutions!**

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The Fiduciary's Responsibility for 401ks & Inventory Questions.

Attention Employers: 401k Sponsors Face Huge Liability Issues!

“DOL CRACKS DOWN: Over 60% of the pension plans in existence today are in violation of ERISA regulations, and the DOL is starting to after small businesses without approved retirement plans.” Estate Planning magazine, 1992

Are You Fulfilling Your Fiduciary Responsibility? How much can you lose as a Trustee?

Employee's #1 Request:

“Who can help me with investment advice so I can create a substantial nest-egg for retirement?”

What if an angry participant or plaintiff's counsel confronts you, saying you have violated your responsibility as a plan fiduciary? Could you prove that you had met your responsibility? What could you show them?

For many fiduciaries of 401(k) plans, the answer is: very little. And that opens up the potential for litigation.

While 401(k) plans are the sole retirement plan savings vehicle for over 40 million participants -- and an essential benefit for small and mid-sized companies -- many employers offer them without being fully aware of the responsibility and potential liability that accompanies 401(k) plans.

Massive losses in 401k and pension plans decimate employee retirement accounts! With 2002 a record year for new civil suits -- over 11,000 -- lawyers see an opportunity for litigation that "will be bigger than tobacco." While the giant Enrons grab headlines, most litigation involves smaller companies.



What you must know to protect yourself if your company has a 401k plan.

**Don't wait until you are sued to fix your retirement plan.
Take the Inventory Quiz, and find out if you are protected.**

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“Prudent Investing” □ Discover what it is and how to build it into your plan.

fi·du·cia·ry – **One often in a position of authority who obligates himself or herself to act on behalf of another (as in managing money or property) and assumes a duty to act in good faith with care, candor, and loyalty in fulfilling the obligation: one having a fiduciary duty to another.**

WARNING! Fiduciary Liability Litigation Targets Employers.

Increasingly, pension and 401(k) plan fiduciaries find themselves targets of complex fiduciary liability lawsuits that threaten corporate and even personal assets. "When business officers, directors and executives do not fully understand the serious obligations of serving as a fiduciary, under ERISA, they expose themselves to the risk of costly litigation." states Mark Johnson, Ph.D., J.D. and President of ERISA Benefits Consulting. The Employee Retirement Income Security Act (ERISA) contains four requirements for 401(k) or retirement plan fiduciaries often referred to as the obligation to operate plans for the "exclusive benefit" of the participants:

the duty of loyalty;
the duty of prudence,
the duty to diversify investments; and
the duty to follow plan documents.

ERISA Section 409 stipulates that any "person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this title shall be personally liable to make good to such plan any losses to the plan resulting from each such breach..." The fiduciary may also be personally responsible for paying any civil penalties or excise taxes imposed on an employer by a Court of Law.

On September 11, 2006 a single St. Louis-based law firm filed a series of class action lawsuits that has been described as "an all-out assault on the fee structure employed by most 401(k) plans." The targets of these lawsuits are some large plan sponsors and the fiduciaries of their 401(k) plans. The essence of these lawsuits is that the fiduciaries had only vague notions of how they were spending the participants' money and the participants were receiving little or no value for that money. In short, the fiduciaries did not work "solely in the interests of the participants and beneficiaries...for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the plan."

These lawsuits should not be taken lightly for these litigators have stumbled across the Achilles heel of 401(k) fiduciaries—a compliance and procedure, rather than a value and results, driven approach to running 401(k) plans.

As its name suggests, ERISA was created to help protect the interests of pension and employee benefit plan beneficiaries. **Under ERISA, an individual (or organization) is deemed a fiduciary if that person (or entity) exercises any discretionary authority or control over the management of any type of employee benefit plan.**

The Fiduciary Inventory

Welcome to the Fiduciary Inventory. This is your chance to rigorously examine your present retirement plan and determine what the next best step is for you as a fiduciary and/or a plan participant. Chances are that one of your biggest problems is that...

You don't even know what your real problems are!

The first step in improving your plan's performance and minimizing liability exposure is to diagnose the true nature of your current position. Asking the "right" questions can only do this. What are the right questions? Taken as a whole, they are the questions that few retirement plan processes answer and they lay at the very heart of building better solutions to reach your goals.

You don't know what you don't know!

Most of these questions will deal with issues you may have never directly addressed or worse yet, didn't even know existed. Each question has been specifically developed to help you focus on both the dangers and opportunities inherent in your plan.

By completing this diagnostic tool, you will begin to see what the real underlying problems are and quantify them so that you can begin to solve them. Most plan fiduciaries do not know what their problems are or how much they could personally cost them. After completing this questioning process, you will have achieved excellent insight into both areas.

ALL GROWTH STARTS WITH THE TRUTH!

Before You Proceed, please understand...

The Fiduciary Inventory requires approximately 45 – 60 minutes.

Please block out this time and arrange to have no interruptions. Each question is extremely important, and should be considered with great care. Your personal wealth and the wealth of your company could depend on your responses and your action. If you would like to schedule a meeting or phone conversation to discuss each question, please give us a call at 1.800.958.6554. We are here to help. It's important to us that you have an understanding of your responsibilities rather than leaving this undone.

The Fiduciary Questions



1. Does your plan have an Investment Policy Statement? Do you follow it?
 - Yes
 - No
2. Are all plan documents updated in accordance with ERISA and the law?
 - Yes
 - No
3. Have all costs (explicit and implicit) been accurately expressed and accounted for?
 - Yes
 - No
4. Does your plan offer prudent and diversified investment options?
 - Yes
 - No
5. Do you have an education process in place?
 - Yes
 - No
6. Have all trustees acknowledged their fiduciary status?
 - Yes
 - No
7. Are you aware of the problems associated with “self dealing?”
 - Yes
 - No
8. Do you have a process for measuring volatility?
 - Yes
 - No
9. Do you have a formalized process for participants to use when selecting investment options?
 - Yes
 - No
10. Are you familiar with the guidelines of the Prudent Investor Rule? Do you follow them?
 - Yes
 - No

11. Do you conduct formal reviews on your plan?

- Yes
- No

12. Do you have an investment committee?

- Yes
- No

13. Are you aware of the remaining liability when seeking safe harbor under 404c provisions?

- Yes
- No

14. Have all finders' fees/12-b-1 fees and commissions been accounted for and appropriately applied to your plan?

- Yes
- No

15. Are you prepared to defend yourself in the event of a Department of Labor (DOL) audit?

- Yes
- No

16. Can you articulate, in a scientific/statistical manner the relevant amount of risk in your plan?

- Yes
- No

17. Are selected asset classes consistent with the identified risk, return and time horizon?

- Yes
- No

18. Do you know where your plan options fall within the Markowitz Efficient Frontier?

- Yes
- No

19. Do you have an academic format to measure diversification in your plan?

- Yes
- No

20. Do you know how to measure volatility for your investment options?

- Yes
- No

The Plan Questions



1. If the three biggest problems facing your plan could be magically solved, what would those three problems be?

- A. _____
- B. _____
- C. _____

2. How much are these problems costing you?

3. How long have you had these problems?

4. How have you tried to fix them?

5. How has your advisor or administrator tried to fix them?

6. Are these problems important? If so, just how important are they? Describe.

7. Are you one of the largest participants in the plan?

8. Are you completely satisfied with your personal portfolio results? (explain)

9. Are you clear about your fiduciary standing? Are you a fiduciary to the plan?

10. If you are a fiduciary, are you aware that you are personally liable for breaches of fiduciary standards?

11. What steps, if any, have you taken to mitigate or reduce the exposure of this liability?

The Commitment Meter

On a scale of 1 to 10,
how committed are you to solving your problems?

1 2 3 4 5 6 7 8 9 10

Circle your level of commitment above and write that number here: _____

If your commitment level is not a “9” or a “10” then, frankly, your commitment level is not sufficient to justify the expenditure of time, energy, focus and money to solve these problems. It is only fiduciaries and plan sponsors who truly want to find a better way and who succeed!

In his classic, *The Art of War*, Sun Tzu wrote about 2500 years ago:

*“Strategy without tactics is the slowest route to victory.
Tactics without strategy is the noise before defeat.”*

The current approach of many retirement plan and 401(k) fiduciaries is tactics without strategy.

A value driven, (quantitatively measured) results oriented process, by combining both strategy and tactics, provides value for participants and piece of mind for fiduciaries.

If you are one who can bring this level of focus and commitment to the table call us to continue – 1.800.958.6554.

A few of our Experienced Experts from Finish Rich Now...

Woodie Montgomery is a Registered Financial Consultant and Certified Estate Counselor with over 30 years experience advising individuals, entrepreneurs, real estate investors, and retirees on tax reduction, asset protection, estate planning, and asset accumulation. Woodie is the founder and director of Finish Rich Now.

Gina Weller is a Certified Estate Counselor and an Accredited Tax Preparer. She has a Bachelor of Science in Accounting and Management Information Systems. She received her formal training in the Certified Financial Planning curriculum from Florida State University.

Fred Taylor is a Certified Financial Planner, Charter Life Underwriter and Accredited Investment Fiduciary. Fred started his career early on Wall Street and has over 40 years knowledge in advising and coaching clients in all areas of financial planning and investment management.

Our Purpose and Philosophy...

It's not reasonable to assume that any one person can advise you on all your needs. However, when you hire advisors, you deserve honest, untainted choices. At Finish Rich Now, we want you to make smart decisions about your money, and enjoy your life doing your passion whether it is family, travel, career, or combinations. Our financial management team members are people who have years of knowledge and experience in each of our chosen fields. We take our work and our time very seriously. Our purpose is to help you get where you want to be with as much or little help as you need from us. We are here to keep you from stumbling or to hold your hand with every question. Whatever way you choose to move forward, expect extraordinary results from our team. Our success is measured by our client's success in achieving their goals.

OUR QUALIFICATIONS: At Finish Rich Now, we have gathered some of the most distinguished and successful minds in the country to share their experience and vision with our friends and clients.

We are pleased to have Frederick C. Taylor, CLU, CFP®, AIF® with his long-term and valuable experience on our team.*

Fred Taylor is a wealth coach and President of Professional Associates Wealth Coaching, Inc. located in Marietta, GA.

While attending and then graduating from Upsala College, he was the first recipient of the scholar/internship program offered by Northwestern Mutual Life Insurance Company. Upon graduation, he began his career with Home Life of NY. Subsequently, he worked with the medical and dental associations in the New York and New Jersey metropolitan area providing endorsed Retirement Plans to their members. He then spent five years with Wall Street brokerage firms prior to relocating to Atlanta in 1973

In 1974, he formed Professional Associates, the predecessor to his present firm. During this period, Fred was been responsible for creating the first endorsed financial planning program for a professional association. Concurrently, he was an early member and proponent of the financial planning and the Certified Financial Planner movement. He has earned the professional designations: Chartered Life Underwriter (CLU) in 1975, Certified Financial Planner (CFP®) in 1978 and Accredited Investment Fiduciary (AIF®) in 2005. He is a member of the Society of Financial Service Professionals and the Financial Planning Association.

As an active speaker, lecturer and writer, Fred has spoken and taught at numerous professional conferences, symposiums and civic events as well as having authored several published articles. He has appeared on programs with such notables as: former President Gerald Ford, former Israeli Foreign Minister Abba Eban, investment “greats” John Templeton and Phillip Carret. He has been profiled in *Business Atlanta* and was a regular guest on WRNG & WSB radio in Atlanta.

Why you want an AIF® or AIFA® Designee working with you and your 401k plan.

AIF® and AIFA® designees have acquired a thorough knowledge of fiduciary responsibility and can be an invaluable resource to investment fiduciaries and individual investors alike.

AIF® and AIFA® designees have the training necessary to ensure that an investment management process is managed to an appropriate fiduciary standard of care.

AIF and AIFA designees have successfully completed a specialized program on investment fiduciary standards of care at the Center for Fiduciary Studies. The Center, in association with the University of Pittsburgh Joseph M. Katz Graduate School of Business, was established in 1999 to provide the investment industry with the first full-time training and research facility focused exclusively on investment fiduciary responsibility and portfolio management.

Designees have passed a comprehensive examination on the *27 Prudent Investment Practices* that formed the basis of their training. Designees are also required to strictly adhere to continuing professional education requirements which keep them abreast of recent events in the industry that are affecting every fiduciary.

Prudent Investment Process :

The *27 Practices* that designees follow have been fully substantiated by legislation, case law, and regulatory opinion letters that govern the fiduciary. *Prudent Investment Practices*, the published handbook that describes these *Practices*, was co-produced by the Center and the American Institute of Certified Public Accountants (AICPA). Each of the *27 Practices* also makes good investment sense, and utilizing the process they define should help to improve long term investment performance.

Recommended Reading:

The Retiree's Complete Guide to the Secrets of a Secure and Peaceful Retirement! by Woodie Montgomery

Keeping Your Money Safe and Profitable in Your Golden Years! by Woodie Montgomery

How to Become a Really Successful Stock Market Investor! by Woodie Montgomery and Fred Taylor

The Dirty, Filthy Lies My Broker Taught Me, and 101 Truths about Money and Investing, by Fred Taylor & Mark Matson

Winning the Loser's Game. By Charles D. Ellis

Unconventional Success (A Fundamental Approach to Personal Investment), by David Swensen

A Random Walk Down Wall Street, by Burton Malkiel

The Abundance Coaching Systems Free Market Fiduciary Program: The Fiduciary Benefits of Using an Independent Investment Manager for Participant-directed 401(k) Plans, by Matthew I. Whitehead, J.D.



Woodie Montgomery is a Registered Financial Consultant and Certified Estate Counselor with four decades years experience and knowledge advising individuals, entrepreneurs, and retirees on asset protection, tax reduction, estate planning, and asset accumulation. She has served on the boards of the Buckhead Business Association and the Women's Commerce Club in Atlanta, GA. She was board member and past Vice President of the premier Atlanta Women Business Owners. She is a business member and serves on the Business Council of the Georgia Real Estate Investors Association, and member of the Native Atlantans Club.

She is a maverick financial strategist and wealth coach who has shown hundreds of people unique strategies for making smart choices about their money. Programs are designed for people who want information so they can make educated decisions about their lives, want to know the hidden opportunities to wealth accumulation, and want to know how to protect themselves from the government, inflation, taxes, undeserving relatives, lawsuits, and other aggravations.

After running a successful insurance agency, Woodie started a unique financial strategy and advisory services company, **finishrichnow.com** in 2001. The company is totally independent and has some of the most knowledgeable people in the financial industry. The team of experts include accountants, CPA's, CFPs, CLUs, Registered Financial Consultants, Accredited Investment Fiduciaries, Certified Estate Counselors, Long Term Care Specialists, Certified Insurance Counselors, Certified Senior Advisors, Real Estate Investment Advisors, and Mortgage Consultants.

Strategies reveal virtually unheard of financial opportunities and techniques that can make a huge impact in a person's financial position. With the lack of reliable information, media pornography, corporate scandals, and self-serving sales people, Finish Rich Now professionals provide a welcome relief, proven advice, and superior methods for people who want to know the truth for creating and protecting wealth in trusted advisory relationships.

What makes Finish Rich Now different is providing solutions that other financial professionals overlook, coordinating complete and profitable success plans along with Advisory and Mentor Programs.

Smart Money Strategy Services from Finish Rich Now include the following:

- Income Tax Planning
- Estate and Asset Protection Planning
- Business Planning
- Mortgage Consulting & Brokerage
- Profit Planning (asset accumulation and protection)
- Legal Services
- Debt Restructuring
- Investment & Portfolio Structuring
- Real Estate Mentoring & Advising
- Executive Coaching
- Insurance Consulting

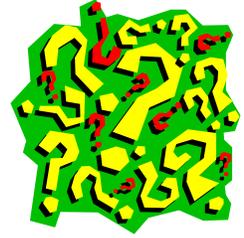
Visit the web site for great tax tips and wealth building strategies. www.finishrichnow.com.
1.800.958.6554

Woodie is a native Atlantan, and grew up in the Buckhead community of Atlanta. She graduated from The University of Georgia with a degree in Journalism specializing in marketing and advertising. Her financial, tax, and estate planning advice is quoted in business and special interests publications. Her published book, "*The Retirees Complete Guide To The Secrets Of A Secure And Peaceful Retirement!*" is written so that anyone, who is already retired, about to be retired, or their kids, can profit by knowing what options they have available to them.

She is a city-gal, who loves the theater, sailing, shooting photographs, white-water rafting, burning daylight in the North Georgia mountains, and having fun.

What is your IQ (Investor Quotient)?

1. Are you invested in the market?
2. Have you ever made a conscious decision about how you believe markets work?
3. Have you defined your investment philosophy?
4. Have you identified your personal risk tolerance level?
5. Are you certain that your portfolio is truly diversified?
6. Do you consistently get above market rates of return?
7. Have you measured the total amount of commission and trading costs you pay in your portfolio?
8. Do you know where you fall on Markowitz's Efficient Frontier?
9. Are you currently working with one wealth coach that you trust with your financial future?
10. When it comes to your investments portfolio, do you know exactly what you are doing and why?



Success in any endeavor requires understanding and a plan. If you cannot answer 'yes' to 9 of these questions, give us a call for a **FREE 30-minute brainstorming session**. Get answers to these questions for yourself and for your company's retirement plans. Your personal wealth depends on making smart choices for your money.

The Finish Rich Now Team:

We are a group of maverick wealth strategists and coaches dedicated to leading proactive thinkers in financial freedom. We have researched unique and easy methods for creating and keeping money. We work with individuals and entrepreneurs to implement unheard of strategies that create wealth, execute creative tax-saving programs, and put into action bulletproof vehicles for controlling wealth.

We cut through the conflicting, confusing, and many times erroneous information from the news media and unknowing financial "experts". We share techniques the rich use to take longer vacations, have secure retirements, larger stock portfolios, and more than enough time and money.

Having wealth is a commitment to understanding financial intelligence, and a willingness to take action. We welcome working with clients who see life in terms of abundance, and expect great things.



Finish Rich Now, LLC

Expect Extraordinary Results from Our Team.

www.finishrichnow.com • 1.800.958.6554