

## Is Your 401k Plan Structure Putting You At Risk?

(If you are the plan sponsor, it is!)

When an **ERISA 3(21)** fiduciary delegation is chosen, the plan sponsor...

- is a co-fiduciary with the investment advisor,
- is considered to be a Prudent Investment Expert by ERISA,
- is personally responsible for all investment choices in the plan,
- is required to know and enforce the terms of the plan.
- bears significant personal liability for all plan choices and risks all personal assets.

***If you chose a 3(21) delegation for your plan, ask yourself these questions:***

1. *As the plan Investment Expert, could I defend my investment decisions in court?*
2. *Is there any positive return for taking the risk of being a fiduciary?*
3. *Am I willing to lose my home, retirement or child's college savings in a lawsuit?*

When an **ERISA 3(38)** fiduciary delegation is chosen, the plan sponsor...

- contractually shifts 100% of fiduciary role to the investment manager,
- is not classified as a Prudent Investment Expert,
- is responsible to periodically monitor the investment advisor, and
- has no personal assets at risk for investment related duties.

***If you did NOT choose a 3(38) delegation you should ask:***

1. *How am I being protected if not by 3(38)? (Even insurance is not a guarantee!)*
2. *Is it difficult to switch to 3(38)? (Talk to an advisor who offers 3(38) as an option.)*
3. *Why would I want to stay with 3(21)? (You actually are an investment expert.)*

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